Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 1 of 268 PageID #:

## Exhibit E3

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 2 of 268 PageID #:

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.,	) ) )
Plaintiffs,	) )
v.	) Case No. 17SL-CC03368
MAGNETEK, INC.,	) Oral Argument Requested
Defendant	)

## DEFENDANT MAGNETEK, INC.'S MOTION TO DISMISS OR STAY THIS ACTION

COMES NOW Defendant Magnetek, Inc., by and through its undersigned counsel, and hereby moving the Court for an order: (1) dismissing Plaintiffs' petition on principles of comity and equity based on an already-pending action in New Jersey involving the same parties and the same transactions and occurrences; (2) dismissing Plaintiff's petition pursuant to Rule 55.27(a)(2) based on a lack of personal jurisdiction over defendant, Magnetek, Inc.; or, (3) alternatively, dismissing Count VI of the petition pursuant to Rule 55.27(a)(6) for failure to state a claim upon which relief can be granted, together with such other and further relief as the Court deems just and proper.

As set forth more fully in the annexed affidavit of Ryan A. Lema, sworn to December 8, 2017, with exhibits, the affidavit of David Pierce, sworn to December 7, 2017, and the accompanying memorandum of law, Plaintiffs' petition should be dismissed because Plaintiffs commenced this duplicative action against Magnetek months after Magnetek commenced an action in New Jersey regarding the same underlying dispute. In the alternative, Plaintiffs' petition should either be dismissed, in its entirety, pursuant to

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 3 of 268 PageID #:

Rule 55.27(a)(2) – because Magnetek is not subject to personal jurisdiction in Missouri; or dismissed, in part, pursuant to Rule 55.27(a)(6) – because Plaintiffs' count for negligent misrepresentation fails to state a claim upon which relief can be granted. Finally, if the Court declines to dismiss Plaintiffs' petition in its entirety, this action should be stayed based on grounds of comity and equity.

WHEREFORE, Defendant Magnetek, Inc. respectfully moves this Court for an order dismissing Plaintiff's petition in its entirety or, in the alternative, dismissing Plaintiff's petition in part while further ordering that this action be stayed based on grounds of comity and equity.

#### LEWIS RICE LLC

By: \_\_/s/ Scott A. Wissel
Scott A. Wissel, #49085
1010 Walnut Street, Suite 500
Kansas City, MO, 64106
(816) 421-2500 – Telephone
(826) 472-2500 – Facsimile

#### PHILLIPS LYTLE LLP

Craig A. Leslie (*pro hac vice* motion to be filed) Ryan A. Lema (*pro hac vice* motion to be filed) One Canalside 125 Main Street Buffalo, New York 14203 Telephone No. (716) 847-8400 cleslie@phillipslytle.com rlema@phillipslytle.com Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 4 of 268 PageID #:

#### **CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Court's electronic filing system, which will automatically send a notice of electronic filing to interested parties.

/s/ Scott A. V	Wissel
----------------	--------

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 5 of 268 PageID #: 1072

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY TWENTY-FIRST JUDICIAL CIRCUIT STATE OF MISSOURI

MONSANTO COMPANY,	)	
PHARMACIA, LLC, and	)	
SOLUTIA, INC.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 17SL-CC03368
vs.	)	
	)	Division 8
MAGNETEK, INC.,	)	
	)	
Defendant.	)	

#### **ENTRY OF APPEARANCE**

COMES NOW John M. Hessel of the law firm of Lewis Rice LLC and hereby enters his appearance as co-counsel for Defendant Magnetek, Inc.

Respectfully submitted,

#### LEWIS RICE LLC

By:/s/ John M. Hessel

John M. Hessel, #26408 600 Washington Avenue, Suite 2500 St. Louis, MO 63101 (314) 444-7735 – Phone (314) 612-7335 – Facsimile jhessel@lewisrice.com

Co-Counsel for Defendant Magnetek, Inc.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 6 of 268 PageID #:

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on plaintiff's counsel and all defense counsel of record via the Missouri Courts e-Filing System Pursuant to Missouri Rules of Civil Procedure 103.08 this 14<sup>th</sup> day of December, 2017.

In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this certificate and the foregoing pleading.

/s/ John M. Hessel
--------------------

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 7 of 268 PageID #:

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice* Craig A. Leslie ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge

January 02, 2018

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 8 of 268 PageID #:

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### <u>ORDER</u>

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice*Jacob S. Sonner ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 9 of 268 PageID #:

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice* Ryan A. Lema ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge

January 02, 2018

Dear P. Walder

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 10 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.	) ) Case No. 17SL-CC03368 )
Plaintiffs,	)
v.	)
MAGNETEK, INC.	)
Defendant.	, )

#### MOTION TO ADMIT PRO HAC VICE CRAIG A. LESLIE

COMES NOW Magnetek, Inc. ("Magnetek"), by and through its undersigned counsel, and hereby moves the Court for entry of an Order for admission *pro hac vice* of Craig A. Leslie ("Applicant"), attorney with the law firm Phillips Lytle LLP, as counsel for Magnetek in this action. In support of this motion, Magnetek states:

- 1. That the undersigned is a member in good standing of the Bar of the State of Missouri.
- 2. The undersigned is an attorney with the law firm Lewis Rice, having an office at 1010 Walnut, Suite 500, Kansas City, Missouri.
- 3. Applicant is counsel at Phillips Lytle LLP. He is a member in good standing of the bar of the state of New York and have been admitted to practice in the following Courts:

Courts of the State of New York; U.S. District Court, Eastern District of New York; U.S. District Court, Northern District of New York; U.S. District Court, Southern District of New York; U.S. District Court, Western District of New York; U.S. Bankruptcy Court, Northern District of New York; U.S. Bankruptcy Court, Western District of New York; U.S. Court of Appeals, Second Circuit.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 11 of 268 PageID

#: **107**8

4. Applicant is not under suspension or disbarment by the highest court of any state or territory of the United States or of the District of Columbia.

- 5. Applicant will be acting in association with the undersigned for the purposes of representing Magnetek.
- 6. The undersigned finds Applicant to be a reputable attorney and recommends that he be admitted to practice before this Court for the limited purpose of representing Magnetek in this action.
- 7. Applicant's admission *pro hac vice* will assist in providing effective representation of Magnetek and will assist the Court in efficiently and expeditiously addressing and deciding the issues presented by this lawsuit.
- 8. In support of this Motion, the Affidavit of Craig A. Leslie is attached together with a receipt for payment of the fee required by Supreme Court Rule 6.01(m), which items are marked Exhibits A and B, respectively.
  - 9. A proposed Order is also attached hereto as Exhibit C.

WHEREFORE, Movant asks that the Court enter an order granting this Motion and admitting Applicant to practice *pro hac vice* in this action.

Respectfully submitted,

#### LEWIS RICE LLC

By: /s/ Scott A. Wissel
Scott A. Wissel, #49085
1010 Walnut Street, Suite 500
Kansas City, MO, 64106
(816) 421-2500 – Telephone
(826) 472-2500 – Facsimile

ATTORNEYS FOR PLAINTIFF

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 12 of 268 PageID

#: 1079

#### **CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Court's electronic filing system, which will automatically send a notice of electronic filing to interested parties.

/s/ Scott A. Wissel

Doc. #: 1-7 Filed: 02/20/23 Page: 13 of 268 PageID #: 1080 Case: 4:23-cv-00204-HEA

## **Exhibit A**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 14 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY,	)	
PHARMACIA, LLC, and SOLUTIA,	)	
INC.	)	Case No. 17SL-CC03368
Plaintiffs,	)	
	)	
V.	)	
	)	
MAGNETEK, INC.	)	
D 0 1	)	
Defendant.	)	

#### AFFIDAVIT OF CRAIG A. LESLIE

I, Craig A. Leslie, being duly sworn, state as follows:

- 1. I am an attorney with the law firm of Phillips Lytle LLP.
- 2. I am a licensed attorney and a member in good standing of the bar in the State of New York. Neither I nor any member of my firm are under suspension or disbarment by any such court.
- 3. I wish to appear *pro hac vice* on behalf of Magnetek, Inc. in the above-styled case.
- 4. I agree to subject myself to the jurisdiction of the courts of Missouri in any manner arising out of my conduct in such proceedings and agree to be bound by the Code of Professional Responsibility applicable to Missouri lawyers and the interpretation thereof by Missouri courts.
- 5. Scott A. Wissel, of the law firm Lewis Rice, having an office at 1010 Walnut, Suite 500, Kansas City, Missouri, is the attorney of record in this case and will serve as associate counsel.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 15 of 268 PageID

#: 1082

FURTHER AFFIANT SAYETH NAUGHT.

Craig A. Leslie

Sworn to and subscribed before me this & day of December 2017.

Notary Public

RHONDAA. MILLER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Oct. 2, 20

Doc. #: 1-7 Filed: 02/20/23 Page: 16 of 268 PageID #: 1083 Case: 4:23-cv-00204-HEA

## **Exhibit B**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 17 of 268 PageID

#: 1084



#### CLERK OF THE SUPREME COURT STATE OF MISSOURI POST OFFICE BOX 150 JEFFERSON CITY, MISSOURI

BETSY AUBUCHON CLERK ERSON CITY, MISSOURI TELEPHONE (573) 751-4144

December 14, 2017

This will hereby acknowledge receipt of \$1230 as required by Rule 6.01(m) for Craig A. Leslie, Ryan A. Lema and Jacob S. Sonner, appearing in Monsanto Company et al. v. Magnetek, Inc., Case No. 17SL-CC03368, before the Circuit Court of St. Louis County, State of Missouri.

Betsy AuBuchon, Clerk

Doc. #: 1-7 Filed: 02/20/23 Page: 18 of 268 PageID #: 1085 Case: 4:23-cv-00204-HEA

## **Exhibit C**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 19 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA
LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice* Craig A. Leslie ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge	

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 20 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.	) ) Case No. 17SL-CC03368 )
Plaintiffs,	) )
٧.	) )
MAGNETEK, INC.	
Defendant.	) )

## MOTION TO ADMIT PRO HAC VICE JACOB S. SONNER

COMES NOW Magnetek, Inc. ("Magnetek"), by and through its undersigned counsel, and hereby moves the Court for entry of an Order for admission *pro hac vice* of Jacob S. Sonner ("Applicant"), attorney with the law firm Phillips Lytle LLP, as counsel for Magnetek in this action. In support of this motion, Magnetek states:

- 1. That the undersigned is a member in good standing of the Bar of the State of Missouri.
- 2. The undersigned is an attorney with the law firm Lewis Rice, having an office at 1010 Walnut, Suite 500, Kansas City, Missouri.
- 3. Applicant is counsel at Phillips Lytle LLP. He is a member in good standing of the bar of the state of New York and have been admitted to practice in the following Courts:

Courts of the State of New York; U.S. District Court, Western District of New York; U.S. Bankruptcy Court, Western District of New York.

4. Applicant is not under suspension or disbarment by the highest court of any state or territory of the United States or of the District of Columbia.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 21 of 268 PageID

5. Applicant will be acting in association with the undersigned for the purposes of representing Magnetek.

- 6. The undersigned finds Applicant to be a reputable attorney and recommends that he be admitted to practice before this Court for the limited purpose of representing Magnetek in this action.
- 7. Applicant's admission *pro hac vice* will assist in providing effective representation of Magnetek and will assist the Court in efficiently and expeditiously addressing and deciding the issues presented by this lawsuit.
- 8. In support of this Motion, the Affidavit of Jacob S. Sonner is attached together with a receipt for payment of the fee required by Supreme Court Rule 6.01(m), which items are marked Exhibits A and B, respectively.
  - 9. A proposed Order is also attached hereto as Exhibit C.

WHEREFORE, Movant asks that the Court enter an order granting this Motion and admitting Applicant to practice *pro hac vice* in this action.

Respectfully submitted,

#### LEWIS RICE LLC

By: /s/ Scott A. Wissel
Scott A. Wissel, #49085
1010 Walnut Street, Suite 500
Kansas City, MO, 64106
(816) 421-2500 – Telephone
(826) 472-2500 – Facsimile

ATTORNEYS FOR PLAINTIFF

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 22 of 268 PageID

#: 1089

#### **CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Court's electronic filing system, which will automatically send a notice of electronic filing to interested parties.

/s/ Scott A. Wissel

Doc. #: 1-7 Filed: 02/20/23 Page: 23 of 268 PageID #: 1090 Case: 4:23-cv-00204-HEA

## **Exhibit A**

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and SOLUTIA, INC.	) Case No. 17SL-CC03368
Plaintiffs,	)
v.	
MAGNETEK, INC.	
Defendant.	Ś

#### AFFIDAVIT OF JACOB S. SONNER

I, Jacob S. Sonner, being duly sworn, state as follows:

- 1. I am an attorney with the law firm of Phillips Lytle LLP.
- 2. I am a licensed attorney and a member in good standing of the bar in the State of New York. Neither I nor any member of my firm are under suspension or disbarment by any such court.
- 3. I wish to appear *pro hac vice* on behalf of Magnetek, Inc. in the above-styled case.
- 4. I agree to subject myself to the jurisdiction of the courts of Missouri in any manner arising out of my conduct in such proceedings and agree to be bound by the Code of Professional Responsibility applicable to Missouri lawyers and the interpretation thereof by Missouri courts.
- 5. Scott A. Wissel, of the law firm Lewis Rice, having an office at 1010 Walnut, Suite 500, Kansas City, Missouri, is the attorney of record in this case and will serve as associate counsel.

\*\*

Electronically Filed - St Louis County - December 19, 2017 - 04:35 PM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 25 of 268 PageID

#: 1092

FURTHER AFFIANT SAYETH NAUGHT.

Jacob S. Sonner

Sworn to and subscribed before me this 11th day of December 2017.

Notary Public

RHONDAA. MILLER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Oct. 2, 20

Doc. #: 1-7 Filed: 02/20/23 Page: 26 of 268 PageID #: 1093 Case: 4:23-cv-00204-HEA

## **Exhibit B**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 27 of 268 PageID



# CLERK OF THE SUPREME COURT STATE OF MISSOURI POST OFFICE BOX 150 JEFFERSON CITY, MISSOURI

65102

BETSY AUBUCHON CLERK

TELEPHONE (573) 751-4144

December 14, 2017

This will hereby acknowledge receipt of \$1230 as required by Rule 6.01(m) for Craig A. Leslie, Ryan A. Lema and Jacob S. Sonner, appearing in Monsanto Company et al. v. Magnetek, Inc., Case No. 17SL-CC03368, before the Circuit Court of St. Louis County, State of Missouri.

Betsy AuBuchon, Clerk

Doc. #: 1-7 Filed: 02/20/23 Page: 28 of 268 PageID #: 1095 Case: 4:23-cv-00204-HEA

## **Exhibit C**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 29 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA
LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice* Jacob S. Sonner ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge	

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 30 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

) )
) )
) )
, )
<i>)</i> )

#### MOTION TO ADMIT PRO HAC VICE RYAN A. LEMA

COMES NOW Magnetek, Inc. ("Magnetek"), by and through its undersigned counsel, and hereby moves the Court for entry of an Order for admission *pro hac vice* of Ryan A. Lema ("Applicant"), attorney with the law firm Phillips Lytle LLP, as counsel for Magnetek in this action. In support of this motion, Magnetek states:

- 1. That the undersigned is a member in good standing of the Bar of the State of Missouri.
- 2. The undersigned is an attorney with the law firm Lewis Rice, having an office at 1010 Walnut, Suite 500, Kansas City, Missouri.
- 3. Applicant is counsel at Phillips Lytle LLP. He is a member in good standing of the bar of the state of New York and have been admitted to practice in the following Courts:

Courts of the State of New York; Courts of the Commonwealth of Massachusetts; U.S. District Court, Eastern District of New York; U.S. District Court, Northern District of New York; U.S. District Court, Southern District of New York; U.S. District of New York; U.S. Bankruptcy Court, Western District of New York; U.S. Court of Appeals, Second Circuit.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 31 of 268 PageID

#: 1098

4. Applicant is not under suspension or disbarment by the highest court of any state or territory of the United States or of the District of Columbia.

5. Applicant will be acting in association with the undersigned for the purposes of representing Magnetek.

6. The undersigned finds Applicant to be a reputable attorney and recommends that he be admitted to practice before this Court for the limited purpose of representing Magnetek in this action.

7. Applicant's admission *pro hac vice* will assist in providing effective representation of Magnetek and will assist the Court in efficiently and expeditiously addressing and deciding the issues presented by this lawsuit.

8. In support of this Motion, the Affidavit of Ryan A. Lema is attached together with a receipt for payment of the fee required by Supreme Court Rule 6.01(m), which items are marked Exhibits A and B, respectively.

9. A proposed Order is also attached hereto as Exhibit C.

WHEREFORE, Movant asks that the Court enter an order granting this Motion and admitting Applicant to practice *pro hac vice* in this action.

Respectfully submitted,

#### LEWIS RICE LLC

By: /s/ Scott A. Wissel
Scott A. Wissel, #49085
1010 Walnut Street, Suite 500
Kansas City, MO, 64106
(816) 421-2500 – Telephone
(826) 472-2500 – Facsimile

ATTORNEYS FOR PLAINTIFF

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 32 of 268 PageID #: 1099

### CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Court's electronic filing system, which will automatically send a notice of electronic filing to interested parties.

/s/ Scott A. Wissel

Doc. #: 1-7 Filed: 02/20/23 Page: 33 of 268 PageID #: 1100 Case: 4:23-cv-00204-HEA

## **Exhibit A**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 34 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMP	ANY,	)	
PHARMACIA, LLC,	and SOLUTIA,	Ś	
INC.		Ś	
	Plaintiffs,	) )	Case No. 17SL-CC03368
v.		)	
MAGNETEK, INC.	w	)	
	Defendant.	)	

#### AFFIDAVIT OF RYAN A. LEMA

- I, Ryan A. Lema, being duly sworn, state as follows:
- 1. I am an attorney with the law firm of Phillips Lytle LLP.
- 2. I am a licensed attorney and a member in good standing of the bar in the State of New York and the Commonwealth of Massachusetts. Neither I nor any member of my firm are under suspension or disbarment by any such court.
- 3. I wish to appear *pro hac vice* on behalf of Magnetek, Inc. in the above-styled case.
- 4. I agree to subject myself to the jurisdiction of the courts of Missouri in any manner arising out of my conduct in such proceedings and agree to be bound by the Code of Professional Responsibility applicable to Missouri lawyers and the interpretation thereof by Missouri courts.
- 5. Scott A. Wissel, of the law firm Lewis Rice, having an office at 1010 Walnut, Suite 500, Kansas City, Missouri, is the attorney of record in this case and will serve as associate counsel.

Doc. #: 1-7 Filed: 02/20/23 Page: 35 of 268 PageID Case: 4:23-cv-00204-HEA

#: 1102

FURTHER AFFIANT SAYETH NAUGHT.

Ryan A. Lema

Sworn to and subscribed before me this day of December 2017.

Notary Public

MARIAN SARZYNIAK
No. 015A6206283
Notary Public. State of New York
Qualified in Niagara County
My Commission Expires 05/18/20

Doc. #: 1-7 Filed: 02/20/23 Page: 36 of 268 PageID #: 1103 Case: 4:23-cv-00204-HEA

## **Exhibit B**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 37 of 268 PageID

#: 1104



# CLERK OF THE SUPREME COURT STATE OF MISSOURI POST OFFICE BOX 150 JEFFERSON CITY, MISSOURI

65102

BETSY AUBUCHON CLERK

TELEPHONE (573) 751-4144

December 14, 2017

This will hereby acknowledge receipt of \$1230 as required by Rule 6.01(m) for Craig A. Leslie, Ryan A. Lema and Jacob S. Sonner, appearing in Monsanto Company et al. v. Magnetek, Inc., Case No. 17SL-CC03368, before the Circuit Court of St. Louis County, State of Missouri.

Betsy AuBuchon, Clerk

Doc. #: 1-7 Filed: 02/20/23 Page: 38 of 268 PageID #: 1105 Case: 4:23-cv-00204-HEA

## **Exhibit C**

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 39 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA
LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice*Ryan A. Lema ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge	•

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 40 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA
LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice* Craig A. Leslie ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge	

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 41 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA,
LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice*Jacob S. Sonner ("Applicant") in the above-captioned matter. Applicant is hereby admitted pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge	

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 42 of 268 PageID

#### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MONSANTO COMPANY, PHARMACIA
LLC, and SOLUTIA, INC.

Case No. 17SL-CC03368

Plaintiffs,

v.

MAGNETEK, INC.

Defendants.

#### **ORDER**

IT IS HEREBY ORDERED THAT this Court grants the Motion to Admit *Pro Hac Vice*Ryan A. Lema ("Applicant") in the above-captioned matter. Applicant is hereby admitted
pursuant to Missouri Supreme Court Rule 9.03 to appear on behalf of Magnetek, Inc.

Presiding Judge	•

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 43 of 268 PageID

## IN THE CIRCUIT COURT OF ST. LOUIS COUNTY TWENTY-FIRST JUDICIAL CIRCUIT STATE OF MISSOURI

FILED
DEC 22 2017
JOAN M. GILMER

MONSANTO COMPANY, PHARMACIA, LLC, and	)	CIRC
SOLUTIA, INC.,	)	717
Plaintiffs,	)	O N 1701 CC02260
vș.	)	Case No. 17SL-CC03368
	)	Division 8
MAGNETEK, INC.,	)	
- a .	)	
Defendant.	)	

#### <u>ORDER</u>

By agreement of the parties, Plaintiff shall file its Memorandum in Opposition to Defendant's Motion to Dismiss or Stay on or before January 19, 2018. Defendant shall file its Reply Memorandum on or before February 2, 2018. A hearing for oral argument on the Motion is set for February 16, 2018. at 1:30 pm.

#### THOMPSON COBURN LLP

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 44 of 268 PageID

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 45 of 268 PageID #: 1112

### IN THE CIRCUIT COURT OF ST. LOUIS COUNTY STATE OF MISSOURI

MONSANTO COMPANY,	)	
PHARMACIA, LLC, and	)	
SOLUTIA, INC.	)	
	)	
Plaintiffs,	)	Cause No. 17SL-CC03368
	)	
v.	)	
	)	
MAGNETEK, INC.	)	
	)	
Defendant.	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT MAGNETEK, INC.'S MOTION TO DISMISS OR STAY THIS ACTION

John R. Musgrave #20358 Christopher M. Hohn #44124 A. Elizabeth Blackwell #50270 Susan L. Werstak, #55689 David M. Mangian #61728 THOMPSON COBURN LLP One U.S. Bank Plaza St. Louis, Missouri 63101 (314) 552-6000 (telephone) (314) 552-7000 (facsimile)

#### TABLE OF CONTENTS

			<u>Page</u>
TABL	E O	F CC	ONTENTS ii
TABL	E O	F AU	JTHORITIES iii
I.	INT	ΓRΟΙ	DUCTION
II.	BA	CKC	GROUND
A.	UM	IC E	ntered Into The SUA In Missouri
В.	Def	fenda	ant Refused To Defend Or Indemnify Old Monsanto Under The SUA 4
C.			ant Filed A Preemptive "Placeholder" Declaratory Judgment Lawsuit In New During The Parties Negotiations
D.			urt Denied Plaintiffs' Motions To Dismiss The New Jersey Action <i>Without</i> ce Subject To Further Jurisdictional Discovery Proceedings
III.	AR	GUN	MENT
A.	Ma	gnete	ek Is Subject To Specific Personal Jurisdiction In Missouri
	1.	UM	MC's Jurisdictional Contacts With Missouri Are Imputed To Magnetek
	2.	Mis	ssouri's Long-Arm Statute Is Satisfied
		a.	Magnetek Made Multiple Contracts In Missouri
		b.	Magnetek Transacted Business In Missouri
		c.	Magnetek Contracted To Insure A Person, Property, Or Risk Located Within Missouri At The Time Of Contracting
		d.	Magnetek Committed Tortious Acts Producing Actionable Consequences In Missouri
	3.		ignetek's Substantial Contacts With Missouri Relating to the SUA Are Sufficient nimum Contacts To Satisfy Due Process
		a.	Magnetek Entered Into The Contract At Issue In Missouri And It Requires Magnetek To Defend And Indemnify A Missouri Company Relating To PCBs Magnetek Purchased In Missouri
		b.	Defendant Communicated With Old Monsanto In Missouri Regarding Alleged Insurance Covering UMC's Obligations Under The SUA

		c.	Magnetek Rejected Plaintiffs' Tender And Thereby Breached The SUA In Missouri	
		d.	UMC Committed Tortious Acts In Missouri With Effects Directed And Felt In Missouri	
		e.	UMC Was Physically Present In Missouri Relating to PCBs Purchased Pursuant To The SUA	
		f.	Magnetek's Due Process Analysis Should Be Rejected	
		g.	Exercise Of Personal Jurisdiction Over Magnetek Is Reasonable	
	4.	Alt	ernatively, The Court Should Allow Jurisdictional Discovery	
В.	This Court Should Not Exercise Its Discretion To Dismiss Or Stay This Case In Favor O The New Jersey Action			
C.	Plai	intiff	s' Negligent Misrepresentation Claim Is Sufficiently Pleaded	
IV.	CO	NCL	USION	
CERT	TFIC	CATI	E OF SERVICE29	

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 47 of 268 PageID #: 1114

#### **TABLE OF AUTHORITIES**

	Page(s)
Cases	
AmSouth Bank v. Dale, 386 F.3d 763 (6th Cir. 2004)	24
Andra v. Left Gate Property Holding, Inc., 453 S.W.3d 216 (Mo. 2015)	passim
BASF Corp. v. Symington, 50 F.3d 555 (8th Cir. 1995)	24
Bennett v. Rapid Am. Corp., 816 S.W.2d 677 (Mo. 1991)	8
Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S.Ct. 1773 (2017)	7
Bryant v. Smith Interior Design Group, Inc., 310 S.W.3d 227 (Mo. banc 2010)	passim
Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985)	20
Burnham v. Superior Court of California, County of Marin, 495 U.S. 604 (1990)	17
Cepia, LLC v. Universal Pictures Visual Programming Limited, 177 F. Supp. 3d 1129 (E.D. Mo. 2016)	19
Chromalloy Am. Corp. v. Elyria Foundry Co., 955 S.W.2d 1 (Mo. 1997)	passim
Clockwork Home Servs., Inc. v. Robinson, 423 F.Supp.2d 984 (E.D. Mo. 2006)	24
Cutten v. Latshaw, 344 S.W. 2d 257 (Mo. Ct. App. 1961)	25
Daimler AG v. Bauman, 134 S.Ct. 746 (2014)	7, 12
State ex rel. Deere & Co. v. Pinnell, 454 S.W.2d 889 (Mo. 1970)	22

Digitrax Entm't, LLC v. Universal Music Corp., 21 F.Supp.3d 917 (E.D. Tenn. 2014)	24
Eli's Chicago Finest, Inc. v. Cheesecake Factory, Inc., 23 F.Supp.2d 906 (N.D. Ill. 1998)	24
Fruit of the Loom, Inc. v. Travelers Indemn. Co., 284 Ill. App. 3d 485 (Ill. App. 1996)	, 26
Green v. Montgomery Ward & Co., 775 S.W.2d 162 (Mo. Ct. App. 1989)	8
Grey v. Independent Orders of Foresters, 196 S.W. 779 (Mo. Ct. App. 1917)	25
Hale v. Hale, 781 S.W. 2d 815 (Mo. Ct. App. 1989)	25
International Shoe Co. v. Washington, 326 U.S. 310 (1945)	, 20
Jewell v. Jewell, 484 S.W. 2d 668 (Mo. Ct. App. 1972)	25
Magnetek, Inc. v. The Travelers Indemnity Co., et al., Case No. 1:17-CV-3173-RWG-SEC, ECF No. 32 (N.D. Ill. Jan. 5, 2018)	27
State ex rel Miller v. Jones, 349 S.W.2d 534 (Mo. Ct. App. 1961)	25
Monsanto Co. v. Gould Electrs., Inc., 965 S.W.2d 314, 317-18 (Mo. Ct. App. 1998)	., 24
Mountaire Feeds, Inc. v. Agro Impex, S.A., 677 F.2d 651 (8th Cir. 1982)	18
State ex. rel. Newport v. Wiesman, 627 S.W.2d 874 (Mo. 1982)	9
State ex rel. Nixon v. Beer Nuts, Ltd., 29 S.W.3d 828 (Mo. Ct. App. 2000)	10
Peoples Bank v. Frazee,         318 S.W.3d 121 (Mo. 2010)         pas	ssim
Purdue Research Found. v. Sanofi-Synthelabo, S.A., 338 F 3d 773 (7th Cir. 2003)	R

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 49 of 268 PageID #: 1116

Renaissance Leasing, LLC v. Vermeer Mfg. Co., 322 S.W.3d 112 (Mo. 2010)	27
Strobehn v. Mason, 397 S.W.3d (Mo. Ct. App. 2013)	9, 13
U.S. Durum Milling, Inc. v. Frescala Foods, Inc., 785 F. Supp. 1369 (E.D. Mo. 1992)	9
Statutes	
RSMo. § 506.500.1	
RSMo. § 506.500.1(1)	8, 9, 10
RSMo. § 506.500.1(2)	8
RSMo. § 506.500.1(3)	9, 11, 12
RSMo. § 506.500.1(5)	8
RSMo. § 506.500.1(5)	10

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 50 of 268 PageID #: 1117

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 51 of 268 PageID

#### I. INTRODUCTION

This Court has specific personal jurisdiction over Defendant Magnetek, Inc. ("Magnetek"), which is the successor in interest to Universal Manufacturing Company ("UMC"). This case arises directly out of Magnetek's breach of a Missouri contract, its predecessor's purchases of millions of pounds of polychlorinated biphenyls ("PCBs") from Pharmacia, LLC, f/k/a Monsanto Chemical Co. ("Old Monsanto") that was based in Missouri, and UMC's negligent misrepresentations made in Missouri that have resulted in harm being sustained in Missouri. Magnetek's motion to dismiss ignores the substantial factual record and the black-letter law of specific personal jurisdiction and should be denied.

The central contract at issue—the 1972 "Special Undertaking by Purchasers of Polychlorinated Biphenyls" (the "SUA")—requires Magnetek to defend, indemnify, and hold harmless Old Monsanto "from and against all liabilities, claims, damages, penalties, actions, suits, losses, costs and expenses arising out of or in connection with" the more than eleven million pounds of PCBs UMC purchased from Old Monsanto between 1972 and 1977. Plaintiffs Old Monsanto, Monsanto Company ("New Monsanto"), and Solutia, Inc. (collectively, "Plaintiffs") were subsequently sued by third parties in Missouri and elsewhere in connection with UMC's use of PCBs sold pursuant to the SUA. The SUA requires Magnetek to defend and provide indemnification for those suits, but Magnetek has refused to do so, a breach of contract resulting in significant damages to Plaintiffs. UMC's entry into a Missouri contract requiring it to defend and indemnify a company that was located in Missouri, UMC's submission of PCB purchase orders to Old Monsanto in Missouri, along with UMC's numerous other suit-related contacts with Missouri described in detail below are more than sufficient to subject Magnetek to specific personal jurisdiction in Missouri.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 52 of 268 PageID

#: 1119

The Court should also deny Defendant's request to dismiss or stay this lawsuit in favor of Magnetek's preemptive "placeholder" declaratory judgment lawsuit filed by Magnetek in New Jersey state court during the pendency of the parties' settlement-related discussions. First, the New Jersey action is due to be dismissed, because the New Jersey court lacks jurisdiction over New Monsanto and Solutia, both of whom are indispensable parties to the litigation. Second, the Plaintiffs here are the rightful Plaintiffs who are seeking significant damages from Magnetek for breach of a Missouri contract and other claims, whereas Magnetek solely seeks in its New Jersey action a declaration of non-liability. Plaintiffs should not be denied their right to litigate their claims for damages in their chosen forum simply because Defendant surreptitiously filed a preemptive declaratory judgment lawsuit first in New Jersey.

Finally, the Court should reject Defendant's challenge to Plaintiffs' negligent misrepresentation claim. The Petition sufficiently alleges all of the elements of a claim for negligent misrepresentation under Missouri law, including that UMC's representations to Old Monsanto were false due to the failure to exercise reasonable care. For these reasons, this Court should deny Defendant's Motion to Dismiss or Stay This Action ("MTD").

#### II. <u>BACKGROUND</u>

#### A. UMC Entered Into The SUA In Missouri.

Magnetek is the successor by merger to UMC. Pet., ¶ 15; Affidavit of David Pierce ("Pierce Aff."), ¶ 2. UMC purchased approximately 11,918,600 pounds of PCBs—which are extremely stable, chemically inert, resistant to heat and fire, and highly electrically resistive (Pet., ¶ 20)—from Old Monsanto between January 1972 and 1977. Affidavit of Robert G. Kaley, II ("Kaley Aff."), Ex. B. UMC incorporated those PCBs into capacitors and lighting ballasts it manufactured and sold. See Fruit of the Loom, Inc. v. Travelers Indemn. Co., 284 Ill.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 53 of 268 PageID

#: 1120

App. 3d 485, 487 (Ill. App. 1996); Pierce Aff., ¶ 4. At the time, Old Monsanto's principal place of business was in Missouri. UMC purchased PCBs by contacting Old Monsanto in Missouri—by telephone and by sending purchase orders to Old Monsanto in Missouri (*see* Kaley Aff., Ex. C). UMC entered into sales contracts for PCBs that were executed in Missouri and that contain Missouri choice of law provisions. Kaley Aff., Ex. D. UMC ultimately released thousands of gallons of the PCBs it purchased from Old Monsanto into the environment through spills, leaks, and improper disposal and dumping. *See Fruit of the Loom, Inc.*, 284 Ill. App. 3d at 488-89. PCBs purchased by UMC also were released into the environment from PCB-containing products manufactured and sold by Defendant.

In 1970, Old Monsanto announced a preliminary decision to cease all production of PCBs, which would have eliminated all then-existing PCB production in the United States. Pet., ¶ 26. Because its decision would have left members of the U.S. electric industry without a domestic source for the PCBs required by existing industry standards, and deemed "necessary" by the federal government, Old Monsanto revised its approach at the request of its customers. Pet., ¶ 27. Old Monsanto agreed to continue to supply PCBs for certain closed electrical applications until the U.S. Environmental Protection Agency, members of the transformer and capacitor industries, and Old Monsanto could reach a consensus judgment that suitable alternatives to PCBs were available. Pet., ¶ 28. Old Monsanto agreed to continue to produce PCBs for its customers to use in electrical applications after 1971, but only if they would agree to defend and indemnify Old Monsanto against future PCB-related claims. Pet., ¶ 41.

After negotiating the particular terms of the agreement, on January 7, 1972, UMC and Old Monsanto entered into the SUA. Pet., ¶ 43. The SUA, which was executed by Old Monsanto *in Missouri* (Kaley Aff., Ex. A), required UMC, and now requires Magnetek, to

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 54 of 268 PageID

#: 1121

defend and indemnify Old Monsanto from certain "liabilities, claims, damages, penalties, actions, suits, losses, costs and expenses . . . arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of" the 11,918,600 pounds of PCBs UMC purchased from Old Monsanto between January 1972 and 1977. Pet., ¶¶ 45-46; Pet., Ex. 1. The SUA is not limited to claims connected only to PCBs purchased by UMC after January 7, 1972, but also applies to claims connected to those PCBs "whether alone or in combination with other substances," including PCBs purchased by UMC prior to the date of the SUA. Pet., ¶ 49; Pet., Ex. 1; See Monsanto Co. v. Gould Electrs., Inc., 965 S.W.2d 314, 317-18 (Mo. Ct. App. 1998).

#### B. Defendant Refused To Defend Or Indemnify Old Monsanto Under The SUA.

Plaintiffs recently have been sued in approximately 46 lawsuits ("the PCB lawsuits") covered by the SUA. Affidavit of Christopher M. Hohn ("Hohn Aff."), ¶ 3. Thus, on August 29, 2016, Chris Hohn, counsel for the Plaintiffs located in Missouri, sent a letter to Mr. Scott S. Cramer of Magnetek, Inc. on behalf of Plaintiffs, requesting that Defendant defend and indemnify Old Monsanto in those PCB lawsuits, as required by the SUA. *See* Hohn Aff. ¶ 3; Hohn Aff., Ex. Q. On September 13, 2016, counsel for Magnetek, Mr. Craig A. Leslie, responded to Mr. Hohn by sending a letter to Mr. Hohn in Missouri, rejecting Plaintiffs' tender of the defense and demand for indemnification in the PCB lawsuits on behalf of Defendant. *See* Hohn Aff. ¶ 4; Hohn Aff., Ex. R.

On April 7, 2017, counsel for Plaintiffs invited Defendant to attend a meeting on May 16, 2017, at the offices of Thompson Coburn LLP in St. Louis, Missouri, to discuss the parties' positions regarding Defendant's obligations under the SUA. Hohn Aff. ¶ 5. The purpose of the meeting was to provide information to Defendant and assess whether the parties could structure a dispute resolution process to try to resolve Plaintiffs' claims outside the context of formal

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 55 of 268 PageID

#: 1122

litigation. *Id.* In addition to Defendant, other companies that had signed SUAs with Old Monsanto (and that also were obligated to defend and indemnify Old Monsanto in the PCB lawsuits) were also invited to the meeting. *Id.* On May 1, 2017, Mr. Leslie responded that he would attend the meeting in Missouri on behalf of Defendant, along with two other individuals for Defendant. *See* Hohn Aff. ¶ 6; Hohn Aff., Ex. U.

## C. Defendant Filed A Preemptive "Placeholder" Declaratory Judgment Lawsuit In New Jersey During The Parties Negotiations.

On Friday May 12, 2017, four days before the parties' scheduled meeting and without informing Plaintiffs or their counsel, Defendant preemptively filed an eight-count declaratory judgment lawsuit against Plaintiffs in the Superior Court of Bergen County, New Jersey (the "New Jersey Action"). See Affidavit of Ryan A. Lema ("Lema Aff."), ¶ 8; Hohn Aff., ¶ 8. Four days later, on May 16, 2017, counsel for Defendant, Mr. Joe Schmit, arrived at Thompson Coburn's offices to attend the scheduled meeting on behalf of Defendant, without informing counsel for Plaintiffs that Defendant had filed the New Jersey Action four days earlier. Hohn Aff. ¶ 9. Approximately one hour before the meeting was scheduled to begin, counsel for Plaintiffs learned, through a docket alert email, that Defendant had filed the New Jersey Action. Id. Counsel for Plaintiffs met with Mr. Schmit privately before the start of the planned meeting and raised Defendant's filing of the New Jersey Action. Id. Mr. Schmit confirmed that the New Jersey Action had been filed, but noted that it had not been served, and stated that the New Jersey Action was a "placeholder." Since Plaintiffs were preparing to meet with Id. representatives from other companies that had not filed suit, counsel for Plaintiffs excused

<sup>&</sup>lt;sup>1</sup> In the New Jersey Action, Defendant seeks *inter alia* a declaration that the SUA is void or unenforceable (Lema Aff., Ex. B at ¶¶ 76, 116, 122), that Defendant is not required to defend and indemnify New Monsanto, Old Monsanto, or Solutia under the SUA (*id.* at ¶¶ 83, 89, 100), and that the SUA does not impose market share liability on Defendant. *See id.* at ¶ 126.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 56 of 268 PageID

#: 1123

Defendant's counsel from the meeting, but requested that Defendant agree to dismiss the New Jersey Action and enter into a standstill and tolling agreement to permit the parties to continue their negotiation outside the context of formal litigation. Hohn Aff. ¶ 10. After considering that proposal for approximately one month, Defendant ultimately declined and served Plaintiffs with the Complaint in the New Jersey Action on June 21, 2017. *Id*.

## D. The Court Denied Plaintiffs' Motions To Dismiss The New Jersey Action Without Prejudice Subject To Further Jurisdictional Discovery Proceedings.

On September 5, 2017, Solutia and New Monsanto filed a joint motion to dismiss Defendant's claims against them in the New Jersey Action for lack of personal jurisdiction. See Lema Aff., ¶ 10. Solutia and New Monsanto argued that they are not subject to general personal jurisdiction in New Jersey because they are not "at home" in New Jersey—i.e., they are not incorporated there, do not have their principal places of business there, and New Jersey is not a surrogate for their place of incorporation or principal place of business. They are not subject to specific personal jurisdiction in New Jersey because neither was in existence when the SUA was signed and the PCBs sold to UMC, and as separate corporate entities, the jurisdictional contacts of New Monsanto are not imputed to them. That same day, Old Monsanto filed a motion to dismiss Defendant's claims against it in the New Jersey Action arguing that the case should be dismissed in its entirety because Solutia and New Monsanto are indispensable parties and the New Jersey Court lacks personal jurisdiction over them. The New Jersey Court heard oral argument on both motions, and on October 13, 2017 entered an order denying the motions without prejudice "subject to further jurisdictional discovery proceedings." See Lema Aff., Exs. C at 4 (emphasis added). The Court explained that due to the "fact sensitive nature of Defendants' corporate structure and activities, a more robust record must be cultivated by the Plaintiff in order for this Court to make the necessary determination as to its jurisdiction over the Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 57 of 268 PageID

#: 1124

Defendants." *Id.* at 5. Plaintiffs filed their Answer and Affirmative Defenses in the New Jersey Action—which include *inter alia* defenses that the New Jersey Court lacks personal jurisdiction over New Monsanto and Solutia—on November 29, 2017. *See* Lema Aff., ¶ 11; Lema Aff., Ex. E.

On December 8, 2017—almost two months after the Court denied the Motions to Dismiss the New Jersey Action and three days before Magnetek filed its Motion to Dismiss in this case—Defendant served interrogatories, requests for production, and deposition notices on Plaintiffs. Lema Aff., Ex. 12. Magnetek's discovery requests go well beyond the limited jurisdictional discovery allowed by the New Jersey Court. Plaintiffs served their objections and responses to the discovery just three days ago, on January 16, 2018. Hohn Aff., ¶ 12.

#### III. ARGUMENT

#### A. Magnetek Is Subject To Specific Personal Jurisdiction In Missouri.

There are two categories of personal jurisdiction—specific and general. *Daimler AG v. Bauman*, 134 S.Ct. 746, 754 (2014). "In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773, 1780 (2017) (internal quotations omitted) (quoting *Daimler AG*, 134 S.Ct. at 754). "In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum state and is therefore subject to the State's regulation." *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011)). This Court has specific jurisdiction over Magnetek for claims arising out of the SUA.

"Missouri courts employ a two-step analysis to evaluate personal jurisdiction." *Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227, 231 (Mo. banc 2010). "First, the Court

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 58 of 268 PageID

#: 1125

inquires whether the defendant's conduct satisfies Missouri's long-arm statute, section 506.500." *Id.* If the long-arm statute is satisfied, "the court next evaluates whether the defendant has sufficient minimum contacts with Missouri such that asserting personal jurisdiction over the defendant comports with due process." *Id.* Both the Missouri long-arm statute and due process are easily satisfied by Magnetek's conduct in this case and substantial suit related contacts with the State of Missouri.

#### 1. UMC's Jurisdictional Contacts With Missouri Are Imputed To Magnetek.

Magnetek concedes that it is the "successor by merger to UMC." MTD, p. 2. Therefore, UMC's jurisdictional contacts with Missouri are imputed to Magnetek. *See Bennett v. Rapid Am. Corp.*, 816 S.W.2d 677, 678 (Mo. 1991) ("A myriad of cases hold that a corporation may be subject to personal jurisdiction if its predecessor had sufficient contacts with the state to allow the exercise of jurisdiction."); *Green v. Montgomery Ward & Co.*, 775 S.W.2d 162, 166 (Mo. Ct. App. 1989).<sup>2</sup>

#### 2. <u>Missouri's Long-Arm Statute Is Satisfied.</u>

Missouri permits the exercise of long-arm jurisdiction where a defendant commits any act "sufficient to invoke" Section 506.500. *Chromalloy Am. Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 4 (Mo. 1997). The long-arm statute is satisfied where, as here, the defendant (a) transacted business within Missouri (RSMo. § 506.500.1(1)), (b) made a contract within Missouri (RSMo. § 506.500.1(2)), (c) contracted to insure a person, property or risk located within Missouri at the time of contracting, RSMo. § 506.500.1(5), or (d) committed tortious acts

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<sup>&</sup>lt;sup>2</sup> Magnetek made this same argument with respect to Solutia and New Monsanto in the New Jersey Action. The key difference between Magnetek on one hand, and Solutia and New Monsanto on the other, is that Solutia and New Monsanto are *not* successors-in-interest to Old Monsanto. Rather, Solutia and New Monsanto were created as separate corporate entities, and neither is the successor of Old Monsanto, which continues to exist as Pharmacia LLC. Solutia and New Monsanto received their rights relating to the SUA through assignment, which does not result in transfer of jurisdictional contacts. *See Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 783–84 (7th Cir. 2003).

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 59 of 268 PageID

producing actionable consequences in Missouri. *See* RSMo. § 506.500.1(3). While a defendant need have committed only one of the foregoing acts to support long-arm jurisdiction, Magnetek here committed *all four* of the identified acts.

#### a. Magnetek Made Multiple Contracts In Missouri.

"For purposes of the long-arm statute, a contract is made where acceptance occurs." Strobehn v. Mason, 397 S.W.3d, 487 498 (Mo. Ct. App. 2013); see also U.S. Durum Milling, Inc. v. Frescala Foods, Inc., 785 F. Supp. 1369, 1371–72 (E.D. Mo. 1992) ("A contract is made in Missouri if the final act which gives rise to a binding agreement occurs within this state.") (citing Shady Valley Park & Pool, Inc. v. Dimmic, 576 S.W.2d 579, 580 (Mo. Ct. App. 1979)). Here, although UMC signed the SUA in New Jersey (see Pet., Ex. 2), the evidence clearly establishes that the final act creating the SUA—i.e., Old Monsanto's signature on the SUA—occurred in Missouri. See Kaley Aff., Ex. A (stating: "Thank you for signing and returning the 'Special Undertaking By Purchasers of Polychlorinated Biphenyls' document. It has now been signed by Monsanto and we are enclosing a copy for your files.") (emphasis added). UMC and Old Monsanto also entered into multiple sales contracts for the purchase of PCBs from Old Monsanto in Missouri. See, e.g. Kaley Aff., Ex. D. Because Magnetek entered into a the SUA and other contracts in Missouri, and this action arises out of those contracts, the long-arm statute is satisfied.

#### b. Magnetek Transacted Business In Missouri.

Missouri courts construe the "transaction of business" for purposes of Section 506.500.1(1) "broadly." *State ex. rel. Newport v. Wiesman*, 627 S.W.2d 874, 876-77 (Mo. 1982); *Chromalloy Am. Corp.*, 955 S.W.2d at 4 ("We must construe broadly the 'transaction of business' element in the long arm statute so that *even a single transaction* may confer

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 60 of 268 PageID

#: 1127

jurisdiction, if that is the transaction that gives rise to the suit.") (emphasis added). Here, UMC purchased millions of pounds of PCBs covered by the SUA from Old Monsanto in Missouri by calling sales representatives in Missouri and sending purchase orders into Missouri. Kaley Aff., Ex. B. Missouri courts have long held this kind of on-going and substantial business activity with a Missouri resident constitutes the "transaction of business" within the meaning of Section 506.500.1(1). See, e.g., State ex rel. Nixon v. Beer Nuts, Ltd., 29 S.W.3d 828, 835 (Mo. Ct. App. 2000) (regularly soliciting customers in and from Missouri and maintaining commercial relationships within this state constitutes the transaction of business); Chromalloy Am. Corp., 955 S.W.2d at 4-5 (negotiations to buy a Missouri business sufficient to constitute transaction of business). This action arises directly out of UMC's purchases of PCB's which trigger liability under the SUA. Thus, the long-arm statute is also satisfied because Magnetek transacted business within the State.

c. Magnetek Contracted To Insure A Person, Property, Or Risk Located Within Missouri At The Time Of Contracting.

When UMC entered into the SUA, it agreed to "defend, indemnify and hold harmless"—
i.e., "insure"—Old Monsanto "from and against any and all liabilities, claims, damages, penalties, actions, suits, losses, costs and expenses . . . arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under [UMC], whether alone or in combination with any other substance." Pet., Ex. 1. There is no dispute that, at the time UMC entered into the SUA, Old Monsanto—the "person" UMC agreed to insure—was located in Missouri. Thus, UMC contracted to insure a person, property, or risk located within Missouri at the time of contracting under RSMo. § 506.500.1(5). Magnetek's conclusory assertion that RSMo. § 506.500.1(5) "does not apply to non-insurers such as [Magnetek], or its predecessor UMC" (at p. 11) is completely unsupported. It is also

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 61 of 268 PageID

directly contrary to the plain language of the statute, which makes clear that Section 506.500.1 applies equally to everyone. See RSMo. § 506.500.1 ("Any person or firm . . or any corporation, who . . . does any of the act enumerated in in this section, thereby submits such person, firm, or corporation . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:") (emphasis added). Thus, the long-arm statute also is satisfied because Magnetek contracted to insure a company in Missouri.

d. Magnetek Committed Tortious Acts Producing Actionable Consequences In Missouri.

Section 506.500.1(3) is broad and extends jurisdiction of Missouri courts to "[e]xtraterritorial acts that produce consequence in [Missouri]." Bryant, 310 S.W.3d at 232. Here, Plaintiffs' Complaint alleges that Magnetek negligently misrepresented to Old Monsanto in Missouri that it would use the PCBs in closed applications such that PCBs would not escape Magnetek's products and enter the environment, and that Magnetek negligently misrepresented to Old Monsanto in Missouri that the SUA was "covered by a blanket liability policy with the Travelers Insurance Company." See Petition, ¶¶ 153-155, 160-62; see also Pet., Ex. 2. Magnetek's misrepresentations were made to a company inside the State of Missouri, deceived a company inside the State of Missouri, and are causing harm to Plaintiffs within the state of Missouri. Plaintiffs have been sued in the State of Missouri and other jurisdictions for manufacturing PCBs for companies, including Magnetek, that released or permitted the release of those PCBs into the environment. Id., ¶ 156-57, 166 & Ex. 3 (listing 27 of 46 lawsuits brought in Missouri). The allegations in the Petition are sufficient to demonstrate the commission of a tortious act within Missouri under RSMo. § 506.500.1(3) and to place Magnetek within the reach of Missouri's long-arm statute. See Bryant, 310 S.W.3d at 232 (allegations that sending false and misleading documents into Missouri and misrepresenting or Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 62 of 268 PageID

concealing information via telephone, e-mail, and letter were sufficient to confer jurisdiction pursuant to Section 506.500.1(3)). Missouri's long-arm statute is satisfied for this additional reason.

3. <u>Magnetek's Substantial Contacts With Missouri Relating to the SUA Are Sufficient Minimum Contacts To Satisfy Due Process.</u>

This Court has specific personal jurisdiction over Magnetek for claims arising out of the SUA. "To evaluate whether a defendant's contact with [Missouri] satisfies due process, the court considers whether the defendant purposefully avails itself of the privilege of conducting activities within [Missouri] such that the defendant enjoys the protections of [Missouri] laws and, therefore, should reasonably anticipate being haled into court in [Missouri]." *Andra v. Left Gate Property Holding, Inc.*, 453 S.W.3d 216, 225 (Mo. 2015). Importantly, the Supreme Court has made clear that "the commission of some single or occasional acts of the corporate agent in a state may sometimes be enough to subject the corporation to jurisdiction in that State's tribunals with respect to suits relating to that in-state activity." *Daimler AG*, 134 S.Ct. at 754 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 317-18 (1945)); *see also Bryant*, 310 S.W.3d at 233 ("In some cases, single or isolated acts by a defendant in a state, because of their nature and quality and the circumstances of their commission, provide sufficient minimum contacts to support jurisdiction for liability arising from those acts.").

Plaintiffs' claims in this suit arise directly out of Magnetek's breach of the SUA, UMC's purchases of millions of pounds of PCBs from Old Monsanto that was based in Missouri, and UMC's negligent misrepresentations made in Missouri that have resulted in harm being sustained in Missouri. The totality of these and other suit-related contacts discussed below

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<sup>&</sup>lt;sup>3</sup> The Supreme Court of Missouri has expressly rejected the "five-factor test" cited by Defendant (at p. 14) and instead emphasized that that "a personal jurisdiction inquiry must not be mechanical." *Id.* at 227 n. 9; *see also Bryant*, 310 S.W.3d at 233 n. 4.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 63 of 268 PageID

#: 1130

between UMC —which are imputed to Magnetek as UMC's corporate successor—is more than sufficient to satisfy due process and comply with traditional notions of fair play and substantial justice.

a. Magnetek Entered Into The Contract At Issue In Missouri And It Requires Magnetek To Defend And Indemnify A Missouri Company Relating To PCBs Magnetek Purchased In Missouri.

This case seeks inter alia to enforce Plaintiffs' rights in the SUA. The SUA is a defense and indemnification contract made in Missouri between Old Monsanto and UMC relating to UMC's purchase of PCBs from Old Monsanto. See Kaley Aff., Ex. A; Pet., Ex. 1; Strobehn, 397 S.W.3d at 498-99. Magnetek's execution of the SUA in Missouri, Magnetek's conduct in connection with the SUA in Missouri, the parties' course of dealing relating to the SUA and the PCBs purchased by Magnetek in Missouri, the terms and foreseeable future consequences of the SUA in Missouri, and Magnetek's commission of a tort relating to its execution of the SUA, which caused harm in Missouri, taken together, establish sufficient minimum contacts with the State of Missouri for this Court to exercise specific personal jurisdiction over Magnetek for claims arising out of those contacts. See Peoples Bank v. Frazee, 318 S.W.3d 121, 129-30 (Mo. 2010) ("Prior negotiations and 'contemplated future consequences,' as well as the terms of the contract and the parties' course of dealings, are all factors that must be evaluated in determining 'whether the defendant purposefully established minimum contacts within [Missouri]."') (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479 (1985)); Andra, 453 S.W.3d at 230 (same).

UMC was one of the largest purchasers and users of PCBs manufactured by Old Monsanto. Old Monsanto's records reflect that UMC purchased 11,918,600 pounds of PCBs covered by the SUA from Old Monsanto in Missouri between 1972 and 1977. *See* Kaley Aff.,

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 64 of 268 PageID

#: 1131

Ex. B. These purchases were made pursuant to certain written sales contracts, which were made in Missouri and are "governed and construed in accordance with the laws of the State of Missouri." *See* Kaley Aff., Ex. D. UMC ordered PCBs pursuant to those Missouri sales contracts by calling Old Monsanto's sales representatives located in Missouri and/or by sending purchase orders to Old Monsanto in Missouri. *See* Kaley Aff., Ex. C. Old Monsanto accepted and processed UMC's orders for PCBs in Missouri. *See* Kaley Aff., Ex. C-D.

The nature and terms of the SUA also create a substantial connection with Missouri such that Magnetek could reasonably anticipate being haled into Court in Missouri. The plain language of the SUA makes clear that it was signed by UMC in order to induce Old Monsanto to continue to sell PCBs to UMC. *See* Pet., Ex. 1 ("[Old] Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and [Magnetek] is willing to agree to such undertakings with respect to sales and/or deliveries of PCB's by [Old] Monsanto to [Magnetek]."). UMC's inducement of Old Monsanto is an intentional contact with Missouri sufficient to satisfy due process. *See Peoples Bank*, 318 S.W.3d at 130-31 ("[T]he fact that Mr. Frazee's execution of the guaranty induced Peoples Bank to extend credit to Stephen and Jennifer and Mr. Frazee's active role in the process is sufficient to justify an exercise of personal jurisdiction over the non-resident guarantor.").

The "contemplated future consequences" of the SUA also provide a basis for satisfying due process. Under the SUA, UMC agreed to "defend, indemnify, and hold harmless [Old] Monsanto . . . from and against any and all liabilities, claims, damages, penalties, actions, suits, losses, costs and expenses . . . arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under [Magnetek],

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 65 of 268 PageID

#: 1132

whether alone or in combination with any other substance." Pet, Ex. 1. There is no question that UMC knew, at the time it signed the SUA, that Old Monsanto was located in Missouri. *See, e.g.,* Kaley Aff., Exs. A, C-D; Pet., Ex. 2. It is, therefore, reasonable to conclude that UMC knew—at the time it signed the SUA and agreed to defend and indemnify Old Monsanto relating to the PCBs it purchased—that it could be required to defend and indemnify Old Monsanto under the SUA in Missouri. These continuing obligations and future consequences constitute intentional contacts with Missouri. *See Andra*, 453 S.W.3d at 230-31 (representations and warranties regarding a motor vehicle created continuing obligations between the out-of-state defendant and the Missouri plaintiff making it reasonable to conclude that the defendant knew the vehicle would be repaired in Missouri was intentional contacts with Missouri for due process analysis).

b. Defendant Communicated With Old Monsanto In Missouri Regarding Alleged Insurance Covering UMC's Obligations Under The SUA.

In a letter dated January 7, 1972, the President of UMC sent a letter to Old Monsanto *in Missouri* representing that UMC's continuing defense and indemnity obligations under the SUA were "covered by a blanket liability policy with the Travelers Insurance Company having limits of 10 million dollars." Pet., Ex. 2; Kaley Aff., Ex. F. On January 17, 1972 the insurance manager for UMC's then parent company, Northwest Industries, Inc., sent a letter to Old Monsanto *in Missouri* providing a "Certificate of Insurance" "[i]n furtherance of the undertaking between [Old Monsanto] and our Universal Manufacturing Corporation." Kaley Aff., Ex. I. UMC and Northwest Industries, Inc. sent additional communication regarding this alleged insurance coverage to Old Monsanto *in Missouri* between January 7, 1972 and May 31, 1977 including at least three letters sent by UMC to Old Monsanto in Missouri (*see* Kaley Aff., Ex. H), three letters sent by Northwest Industries, Inc. to Old Monsanto in Missouri (*see* Kaley Aff.,

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 66 of 268 PageID

#: 1133

Ex. I), and various Certificates of Insurance issued to Old Monsanto every year from 1972 to 1977. *See* Kaley Aff., Ex. G. Old Monsanto received and processed the letters from UMC and Northwest Industries, Inc., and the Certificates of Insurance, in Missouri. *See* Kaley Aff., Exs. H-I, J. These communications with Old Monsanto in Missouri satisfy due process because they were made with the intention of furthering the SUA and UMC's continued purchases of PCBs from Old Monsanto, out of which this lawsuit arises. *See Andra*, 453 S.W.3d at 230 (mailing purchase order and federal buyer's guide in order to obtain buyer's signature on legal documents from Missouri were made with the intention of furthering the purchase).<sup>4</sup>

c. Magnetek Rejected Plaintiffs' Tender And Thereby Breached The SUA In Missouri.

Counsel for Plaintiffs and Magnetek have also had multiple communications regarding Magnetek's obligations to defend and indemnify Old Monsanto pursuant to the SUA. *See* Hohn Aff., Exs. Q-V. These communications include multiple letters sent by counsel for Plaintiffs to Magnetek (*see* Hohn Aff., Exs. Q, S, T), and a letter sent by counsel for Magnetek to counsel for Plaintiffs in Missouri rejecting Plaintiffs' tender of defense and demand for indemnification under the SUA. *See* Hohn Aff., Ex. R.

d. UMC Committed Tortious Acts In Missouri With Effects Directed And Felt In Missouri.

This lawsuit also seeks to recover for Plaintiffs' negligence and negligent misrepresentations. Plaintiffs allege that UMC committed tortious acts inside and outside Missouri—*e.g.*, made material misrepresentations regarding use of PCBs and insurance coverage for obligations under the SUA to Old Monsanto in Missouri—that induced Old Monsanto to sell

<sup>&</sup>lt;sup>4</sup> UMC also communicated with Old Monsanto regarding changes in Connecticut law regarding use of PCBs, with regard to preparing for testimony concerning the EPA's proposed PCB effluent standards, and with regard to Old Monsanto's letter to the editor of Business Week regarding PCBs. *See* Kaley Aff., Ex. O.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 67 of 268 PageID

UMC PCBs and led to Old Monsanto being sued in Missouri and elsewhere related to the PCBs sold to UMC. See Petition, ¶¶ 153-57, 160-62, 166; see also Pet., Ex. 3; Kaley Aff., Ex. F. This tortious conduct by UMC is directly analogous to the conduct that the Supreme Court of Missouri found "presents a ready example of facts supporting specific jurisdiction" in Bryant, and, along with UMC's numerous other contacts with Missouri regarding the purchase of PCBs, is sufficient to satisfy due process. See Bryant, 310 S.W.3d at 235 (documents containing material misrepresentations or fraudulent omissions about fees, commissions, and costs that were mailed to Missouri resident along with other related communication and physical presence in Missouri sufficient to satisfy due process).

e. UMC Was Physically Present In Missouri Relating to PCBs Purchased Pursuant To The SUA.

On September 16, 1970, Glen Rayno of UMC visited Old Monsanto in Missouri regarding PCBs. *See* Kaley Aff., Ex. K. On February 28, 1974, UMC's Vice President, N. Ray Clark attended a meeting in Missouri at Old Monsanto's headquarters regarding PCBs. *See* Kaley Aff., Ex. L. The minutes of the meeting, which were sent to Mr. Clark after the meeting, reflect that Mr. Clark participated in the meeting. *See id*. Mr. Clark also attended the International Dielectrics Symposium put on by Old Monsanto in St. Louis, Missouri on September 23, 1974. *See* Kaley Aff., Ex. M. These visits to Missouri relate to the PCBs UMC purchased from Old Monsanto pursuant to the SUA.<sup>5</sup>

Physical presence in Missouri is the hallmark of due process. *See Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 619 (1990) ("The short of the matter is that

<sup>&</sup>lt;sup>5</sup> Mr. Clark was also present in Missouri at Old Monsanto's facilities in November 1971. See Kaley Aff., Ex. N ("As a follow-up to our conversations of November 11 in St. Louis . . . ."). The November 1971 meeting related to Old Monsanto's purchase of certain capacitors from UMC, which Old Monsanto used to test its PCBs. See id. Old Monsanto's records reflect that UMC sent three shipments of capacitors—some of which were impregnated with PCBs purchased from Old Monsanto—to Old Monsanto in Missouri pursuant to purchase orders from Old Monsanto. See Kaley Aff., Ex. E.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 68 of 268 PageID

jurisdiction based on physical presence...constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.' That standard was developed by *analogy* to 'physical presence,' and it would be perverse to say it could now be turned against that touchstone of jurisdiction.") (emphasis in original); *Andra*, 453 S.W.3d at 226 (noting the existence of a "traditional territorial basis such as a defendant's physical presence in the forum state" which permits the exercise of personal jurisdiction); *Bryant*, 310 S.W.3d at 232 (same).

#### f. Magnetek's Due Process Analysis Should Be Rejected.

The decisions Magnetek cites and relies on to support its argument that it did not "engage[] in the type of activity purposefully directed to Missouri that would amount to minimum contacts sufficient to satisfy due process" (see MTD, pp. 14-17) are easily distinguishable. This case involves much more than the "unilateral performance" of a contract for the sale of goods found insufficient to satisfy due process by the Eighth Circuit in Mountaire Feeds, Inc. (see Mountaire Feeds, Inc. v. Agro Impex, S.A., 677 F.2d 651, 655 (8th Cir. 1982)), or the sporadic communication into Missouri relating to a non-Missouri contract found insufficient to satisfy due process in Vetrotex, CPC-Rexcell, Institutional Marketing, Scullin Steel, and T.S.E. Supply Co. Magnetek's contacts with Missouri in this case—e.g., entering into a contract in Missouri to defend and indemnify a Missouri corporation, purchasing millions of pounds of PCBs from Old Monsanto by sending purchase orders into Missouri, and making negligent misrepresentations to Old Monsanto in Missouri—are also far more substantial than the choice of law provision in a non-Missouri contract, sporadic e-mails and phone calls into Missouri, and payment of money into Missouri found insufficient to satisfy due process by the

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 69 of 268 PageID

#: 1136

Eastern District of Missouri in *Cepia*. *See Cepia*, *LLC v. Universal Pictures Visual Programming Limited*, 177 F. Supp. 3d 1129, 1148 (E.D. Mo. 2016).

Magnetek's due process argument—which does not address the nature, quantity, or quality of Magnetek's substantial, suit-related contacts with Missouri—is exactly the type of mechanical application of the minimum contacts analysis the Supreme Court of Missouri has repeatedly said should not be followed. See Chromallov Am. Corp., 955 S.W.2d at 5 ("This minimum contacts test is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite affiliating circumstances are present."); Bryant, 310 S.W.3d at 232 (the personal jurisdiction inquiry "cannot be simply mechanical or quantitative") (internal quotations omitted); Peoples Bank, 318 S.W.3d at 130 (the minimum contacts "due process analysis is a multifaceted, fact-specific inquiry, and never a mechanical application of rules"); see also International Shoe Co., 326 U.S. at 319 ("It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative...[instead] [w]hether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.").

When viewed in total, Magnetek's suit-related contacts with Missouri are substantial and establish that Magnetek purposefully availed itself of the privilege of conducting activities in Missouri such that "the maintenance of the suit does not offend traditional notions of fair play and substantial justice"—i.e., it comports with due process. *Int'l Shoe Co.*, 326 U.S. at 316. Magnetek executed the SUA in Missouri agreeing to defend and indemnify a Missouri corporation; Magnetek purchased millions of pounds of PCBs pursuant to the SUA and purchase

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 70 of 268 PageID

#: 1137

agreements entered into with Old Monsanto in Missouri; Magnetek communicated with Old Monsanto regarding the SUA and PCBs in Missouri; Magnetek was physically present in Missouri relating to its purchase of PCBs from Old Monsanto; and Magnetek committed a tort relating to its execution of the SUA, which caused harm in Missouri. These contacts are not "random," "fortuitous," or "attenuated." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Rather, they are the result of Magnetek's deliberate and intentional engagement of significant activity within the State of Missouri and have created continuing obligations between Magnetek and Plaintiffs in the State of Missouri. *Id*.

This conclusion is supported by the Supreme Court of Missouri's decisions in *Andra*, *Bryant*, *Chromalloy*, and *Peoples Bank* as discussed above. It is also consistent with decisions from the United States Supreme Court. For example, the facts of this case are very similar to *Burger King Corp.*, where the Supreme Court held that a defendant with no physical ties to Florida was subject to specific personal jurisdiction in Florida based on a franchise agreement negotiated with a Florida corporation that resulted in a long-term relationship and eventually ended with the defendant breaching the contract thereby causing foreseeable injuries to the Florida corporation in Florida. *See Burger King Corp.*, 471 U.S. at 480 ("This reasoning overlooks substantial record evidence indicating that [the defendant] most certainly knew that he was affiliating himself with an enterprise based primarily in Florida . . . . Moreover, the parties' actual course of dealing repeatedly confirmed that decision making authority was vested in the Miami headquarters"); *see also International Shoe Co.*, 326 U.S. at 320 (specific personal jurisdiction over out-of-state defendant in Washington where the defendant's activities in Washington "resulted in a large volume of interstate business"). Based upon the nature, quality

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 71 of 268 PageID

#: **113**8

and quantity of suit-related contacts by Magnetek in Missouri, there are unquestionably sufficient minimum contacts to satisfy due process.

g. Exercise Of Personal Jurisdiction Over Magnetek Is Reasonable.

"[A] defendant with minimum contacts to [Missouri] has the burden to present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Andra*, 453 S.W.3d at 233 (quoting *Burger King*, 471 U.S. at 477). The exercise of personal jurisdiction over Magnetek is only unreasonable "if it makes litigation so gravely difficult and inconvenient that [Magnetek] unfairly is at a severe disadvantage in comparison to [Plaintiffs]." *Id.* (quoting *Burger King*, 471 U.S. at 478). "The burden on the defendant largely involves the foreseeability of defending a lawsuit in [Missouri]." *Peoples Bank*, 318 S.W.3d at 132. "The foreseeability of defending a lawsuit can be construed as 'contemplated future consequences' of a contract." *Id.* (quoting *Burger King*, 471 U.S. at 479).

Magnetek has not established any basis—much less a compelling basis—for this Court to determine that litigating this dispute in Missouri would place it at a severe disadvantage. There is no question that Missouri has a significant interest in adjudicating this dispute, which is brought by Missouri citizens relating to a Missouri contract requiring Magnetek to defend and indemnify Old Monsanto in cases filed in Missouri courts. Magnetek's arguments regarding the New Jersey Action should be rejected for the reasons discussed in Section B below—most importantly there is no jurisdiction over Solutia and New Monsanto in New Jersey and Plaintiffs are the rightful plaintiffs who are seeking significant damages from Magnetek for breach of a Missouri contract and other claims. Finally, the fact that documents and witnesses related to UMC's use of PCBs may be physically located outside Missouri, or that some action relating to UMC's liability to Plaintiffs occurred in New Jersey, does not disadvantage Magnetek in this

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 72 of 268 PageID

litigation, which concerns, among other things, Magnetek's contractual obligations to defend and indemnify Old Monsanto. To the extent those documents, witnesses, and conduct are relevant, they can, like in any other modern litigation, be obtained, investigated, and/or interviewed/deposed with minimal inconvenience to the parties.

In short, "[t]here is nothing unfair in requiring a defendant with minimum contacts in Missouri that has benefit from large-scale commercial transactions in Missouri to defend claims in Missouri that arise from these business transactions." *Andra*, 453 S.W.3d at 234. Nor is it unreasonable to require Magnetek, who should have known that it was subjecting itself to possible litigation in Missouri by agreeing to defend and indemnify a Missouri company relating to products purchased in Missouri, to defend a lawsuit to enforce that agreement in Missouri. *See Peoples Bank*, 318 S.W.3d at 133 (finding jurisdiction over out of state guarantor reasonable because guarantor "should have contemplated the potential future consequences in Oklahoma and the possibility of being haled into an Oklahoma court to defend a lawsuit if the loan was called").

#### 4. <u>Alternatively, The Court Should Allow Jurisdictional Discovery.</u>

The Supreme Court of Missouri has made clear that discovery can be "used to inquire into facts relating to jurisdiction of the Court over the person of the defendant." *State ex rel. Deere & Co. v. Pinnell*, 454 S.W.2d 889, 894 (Mo. 1970). Here, Plaintiffs have provided more than sufficient facts to support the exercise of specific personal jurisdiction over Magnetek. To the extent there is any question, however, the Court should allow jurisdictional discovery relating to Magnetek's contacts with the State of Missouri. This is the same procedure adopted by the Court in the New Jersey Action (at Magnetek's request), will not prejudice Magnetek, and is "consistent with the standards of fair play and substantive justice." *Id.* 

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 73 of 268 PageID

#: 1140

# B. This Court Should Not Exercise Its Discretion To Dismiss Or Stay This Case In Favor Of The New Jersey Action.

The Court should not exercise its discretion to dismiss or stay these proceedings in favor of the New Jersey Action because (i) the New Jersey Action is due to be dismissed because the New Jersey Court lacks personal jurisdiction over New Monsanto and Solutia, both of whom are indispensable parties to the litigation, and (ii) Plaintiffs—who are the rightful plaintiffs and are seeking significant damages from Magnetek for breach of a Missouri contract and other claims—should not be denied their preferred forum simply because Magnetek filed a preemptory, "placeholder" declaratory judgment case first in New Jersey.

The New Jersey Action and this case are not the same. This case is a multi-count lawsuit seeking to affirmatively enforce the SUA against Magnetek and to recover substantial damages from Magnetek for breach of the SUA and related tortious conduct occurring in Missouri. By contrast, the New Jersey Action is a preemptory, declaratory judgment suit seeking to establish that the SUA is unenforceable—i.e., a suit seeking to obtain favorable rulings on purported defenses to Plaintiffs' claims in this suit. As explained above, the New Jersey Action is due to be dismissed because New Monsanto and Solutia—who are indispensable parties to the litigation—are not subject to personal jurisdiction in New Jersey. Thus, in order to obtain the same relief in the New Jersey Action that they can obtain here, New Monsanto and Solutia would have to consent to personal jurisdiction in New Jersey, and Plaintiffs would have to assert a counterclaim. This Court should not exercise its discretion to dismiss or stay this case—where all parties are subject to personal jurisdiction and where all claims and defenses can be adjudicated together—in favor of a case that is going to be dismissed.

Plaintiffs—the natural plaintiffs in this dispute—also should not be deprived of their right to litigate Magnetek's liability under the SUA in the forum of their choosing simply because

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 74 of 268 PageID

#: 1141

Magnetek filed a preemptive declaratory judgment lawsuit first in New Jersey. See, e.g., BASF Corp. v. Symington, 50 F.3d 555, 558 (8th Cir. 1995) ("It is our view that where a declaratory plaintiff raises chiefly an affirmative defense, and it appears that granting relief could effectively deny an allegedly injured party its otherwise legitimate choice of the forum and time for suit, no declaratory judgment should issue."); Clockwork Home Servs., Inc. v. Robinson, 423 F.Supp.2d 984, 992-93 (E.D. Mo. 2006) (dismissing declaratory judgment suit where defendant preemptively filed in a race to the courthouse); AmSouth Bank v. Dale, 386 F.3d 763, 788 (6th Cir. 2004) ("Courts take a dim view of declaratory plaintiffs who file their suits mere days or weeks before the coercive suits filed by a 'natural plaintiff' and who seem to have done so for the purpose of acquiring a favorable forum. Allowing declaratory actions in these situations can deter settlement negotiations and encourage races to the courthouse, as potential plaintiffs must file before approaching defendants for settlement negotiations, under pain of a declaratory suit."); Digitrax Entm't, LLC v. Universal Music Corp., 21 F.Supp.3d 917, 923 (E.D. Tenn. 2014) (dismissing first-filed declaratory judgment suit where the parties were engaged in prelitigation settlement discussions on the basis that the filing party "engaged in forum shopping and procedural fencing, if not bad faith" in an effort to "secure its preferred forum"); Eli's Chicago Finest, Inc. v. Cheesecake Factory, Inc., 23 F.Supp.2d 906, 909 (N.D. Ill. 1998) (dismissing first-filed declaratory judgment lawsuit that was filed after accusation of trademark infringement "in hopes of securing a favorable forum"). This is especially true given that Missouri case law—which applies to the SUA regardless of where this case is litigated supports the enforceability of the SUA and rejects some of the very same arguments Magnetek advances in the New Jersey Action. See, e.g., Gould Electrs., Inc., 965 S.W.2d at 314-18.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 75 of 268 PageID

#: 1142

The decisions cited and relied on by Magnetek are easily distinguishable. In *Hale*, the respondent had already obtained judgment—an award for past due child support—in Oklahoma when the appellant filed his motion to modify in Missouri requesting, in part, that the Missouri court extinguish any and all past due child support. *See Hale v. Hale*, 781 S.W. 2d 815, 817 (Mo. Ct. App. 1989). The appellant's claims in the Missouri action were also defenses to the issue pending in Oklahoma, which is the opposite to the situation in this case. *See id.* at 820. In *Grey*, the court found no error in the Missouri court refusing to recognize the judgment of the Canadian court under rules of comity because, unlike here, the issues were "exactly the same" and there was no reason alleged why "full and complete justice could not be secured in the Missouri court." *See Grey v. Independent Orders of Foresters*, 196 S.W. 779, 784 (Mo. Ct. App. 1917). Finally, the *Jewell* decision is distinguishable because there, unlike here, the same party filed both divorce suits and only sought to avoid the first-filed Missouri action and the jurisdiction of Missouri courts after the Missouri Court rendered judgment against him and in favor of the defendant. *See Jewell v. Jewell*, 484 S.W. 2d 668, 674 (Mo. Ct. App. 1972).<sup>6</sup>

Magnetek's contention that the New Jersey Action should take precedence over this action because "it is also at a more advanced stage" (at p. 8) is also unavailing. The two cases are at essentially the same "stage" of litigation—i.e., determination of whether the courts have jurisdiction to proceed. Indeed, although the New Jersey Court denied Plaintiffs' motions to dismiss, it did so without prejudice, so that a more "robust record" regarding New Monsanto and Solutia's contacts with New Jersey could be developed in order for the Court to determine

<sup>&</sup>lt;sup>6</sup> Defendant also cites *Cutten* and *Jones* in a string cite. *See* MTD, p. 8. The *Cutten* case is distinguishable in that it involved two identical actions, which, as explained above, is not the case here. *See Cutten v. Latshaw*, 344 S.W. 2d 257, 258 (Mo. Ct. App. 1961). The *Jones* case states the rule discussed above—that a second action should be stayed only where the plaintiff can obtain complete and full relief in the first filed jurisdiction—and allows a second filed divorce action to proceed. *See State ex rel Miller v. Jones*, 349 S.W.2d 534, 539-40 (Mo. Ct. App. 1961).

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 76 of 268 PageID

#: 1143

whether New Monsanto and Solutia are subject to personal jurisdiction in New Jersey. *See* Lema Aff., Exs. C-D. Because jurisdiction in this Court is clear, this Court is likely to be at a more advanced stage of proceedings as soon as it resolves the instant motion. General discovery is not—as Magnetek suggests—"underway" in the New Jersey Action; only jurisdictional discovery is underway.

#### C. Plaintiffs' Negligent Misrepresentation Claim Is Sufficiently Pleaded.

Finally, the Court should also deny Magnetek's motion to dismiss Plaintiffs' negligent misrepresentation claim. Magnetek argue Plaintiffs' negligent misrepresentation claim is insufficiently pleaded because the Petition "fail[s] to allege any facts to support the assertion that UMC was negligent in stating that it intended to use the PCBs for closed uses and that it would procure liability insurance to cover the Special Undertaking." MTD, p. 20. Not so. Plaintiffs have adequately alleged facts supporting both of UMC's negligent misrepresentations.

The Petition specifically alleges that, contrary to UMC's express representations to Old Monsanto, PCBs purchased from Old Monsanto by UMC were released into the environment by UMC through a variety of ways, including via improper disposal and dumping of its PCB products, leaks, accidental spills, and other means—*i.e.*, the PCBs purchased by UMC were not used solely for "closed uses such that PCBs would not escape Defendant's products and enter the environment." *See* Petition, ¶¶ 54-56 (incorporated into Count VI via Paragraph 159). These allegations are consistent with the findings of fact made by the court in *Fruit of the Loom, Inc.* 

The Petition also alleges that UMC's representation that the SUA "will be covered by a blanket liability policy with the Travelers Insurance Company having limits of 10 million dollars" is false because that coverage either does not exist or has been released. *See* Pet., ¶ 163. Magnetek misunderstands Plaintiffs' claim when it argues it "did not negligently make a false

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 77 of 268 PageID

statement with respect to its *procurement* of insurance coverage." MTD, pp. 20-21 (emphasis added). Magnetek's representation to Monsanto was not merely that it would "procure" insurance coverage, but rather that Magnetek's defense and indemnity obligations under the SUA "will be covered" by that policy. See Pet., Ex. 2 (emphasis added); see also Pet., ¶ 161. The mere fact that Magnetek obtained an insurance policy does not mean the policy actually covers Magnetek's obligations under the SUA. This much is clear from the ongoing litigation between Magnetek and Travelers wherein Travelers alleges that the alleged insurance policy either does not cover the SUA or has been released by Magnetek. See Pet., ¶ 163; see also Magnetek, Inc. v. The Travelers Indemnity Co., et al., Case No. 1:17-CV-3173-RWG-SEC, ECF No. 32 (N.D. Ill. Jan. 5, 2018) ("There is no coverage under the Travelers Policies for the Underlying Claims because Magnetek never obtained, or it waived, any insurance rights under the Travelers Policies.").

Magnetek's final attack—that Plaintiffs' negligent misrepresentation claim fails because Plaintiffs "do not allege that UMC made these alleged misrepresentations with a present intent not to perform"—is flat wrong. Plaintiffs have not asserted a claim for intentional or fraudulent misrepresentation. And, the Supreme Court of Missouri has made clear that "[a] claim for negligent misrepresentation, unlike one for fraud, *does not involve a question of intent.*" *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 134 (Mo. 2010) (emphasis added). "Rather, such a claim is premised on the theory that the speaker believed the information supplied was correct but was negligent in so believing." *Id.* That is precisely what Plaintiffs allege happened here in support of their claim for negligent misrepresentation. *See* Pet., ¶ 162 (alleging the "information supplied by Defendant to [Old Monsanto] was false due to Defendant's *failure to exercise reasonable care.*") (emphasis added).

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 78 of 268 PageID #: 1145

### IV. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs Monsanto Company, Pharmacia, LLC, and Solutia, Inc. respectfully request that the Court deny Defendant Magnetek, Inc.'s Motion to Dismiss or Stay. Alternatively, Plaintiffs request that the Court grant leave to serve limited jurisdictional discovery regarding Defendant's extensive contacts with Missouri.

Respectfully Submitted,

#### THOMPSON COBURN LLP

By: <u>/s/ Christopher M. Hohn</u>

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Email: <a href="mailto:swerstak@thompsoncoburn.com">swerstak@thompsoncoburn.com</a>

Email: dmangian@thompsoncoburn.com

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 79 of 268 PageID #: 1146

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2018, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to all counsel of record.

/s/ Christopher M. Hohn

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 80 of 268 PageID #: 1147

## IN THE CIRCUIT COURT OF ST. LOUIS COUNTY STATE OF MISSOURI

MONSANTO COMPANY,	)	
PHARMACIA, LLC, and	)	
SOLUTIA, INC.	)	
	)	
Plaintiffs,	)	Cause No. 17SL-CC03368
	)	
v.	)	
	)	
MAGNETEK, INC.	)	
	)	
Defendant.	)	

#### Affidavit of Robert G. Kaley, II

I, Robert G. Kaley, II Ph.D., am of sound mind and do hereby declare:

- 1. I hold a Ph.D. in analytical chemistry from the University of Illinois. I was employed by the former Monsanto Company, n/k/a Pharmacia LLC (hereafter "Old Monsanto") from 1973 until September 1997. For approximately 15 years, I served as Director of Environmental Affairs for Old Monsanto focusing on product stewardship, regulatory affairs, and technical litigation support for legacy chemicals, including for polychlorinated biphenyls (PCBs). Prior to that, I spent approximately ten years with Old Monsanto working on the analysis of environmental chemicals by gas chromatography/mass spectrometry.
- 2. From the time of the "spin-off" of certain past and present chemical businesses of Old Monsanto effective September 1, 1997, I was employed by Solutia, Inc. until the time of my retirement from Solutia in August 2003. Since my retirement from Solutia, I have consulted on behalf of Old Monsanto and Solutia, including at the request of the current Monsanto Company.
- 3. During my employment with Old Monsanto and thereafter, I became familiar with Old Monsanto's business records relating to PCBs: (a) made and created by Old Monsanto in the ordinary course of its business; and (b) obtained from related parties and third parties as those records are kept by the current Monsanto Company in its files in the ordinary course of its business in relation to PCBs.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 81 of 268 PageID #: 1148

- 4. The attached Exhibits A through N are true and accurate copies made or received at or near the date the documents bear, have been kept in the course of Old Monsanto's regularly conducted activity, and were made or received as a regular practice in the course of Old Monsanto's regularly conducted activity. Moreover, Exhibits A through N were made by, or from information transmitted by, a person with knowledge of the matters contained therein.
  - a. Attached as Exhibit A is a true and accurate copy of a Monsanto document titled "Special Undertaking by Purchasers of Polychlorinated Biphenyls" accompanied by a letter dated February 7, 1972 from H. S. Bergen, Jr. of Old Monsanto to P. H. Einhorn of Universal Manufacturing Corporation ("UMC").
  - b. Attached as Exhibit B are true and accurate copies of Old Monsanto sales reports showing sales of Aroclor products to UMC from 1972 to 1977.
  - c. Attached as Exhibit C are true and accurate copies of three Purchase Orders from the Capacitor Division of UMC dated November 26, 1975, July 15, 1976, and April 29, 1977, for the purchase of Aroclor products that were sent to Old Monsanto in St. Louis, Missouri.
  - d. Attached as Exhibit D are true and accurate copies of 28 Old Monsanto Invoices to UMC for the purchase of Aroclor products between January 7, 1972 to April 20, 1973.
  - e. Attached as Exhibit E are true and accurate copies of a group of correspondence, purchase orders, and an invoice dating from February 9, 1970 to October 6, 1975, regarding UMC's shipments of capacitors impregnated with PCBs to Old Monsanto in St. Louis, Missouri.
  - f. Attached as Exhibit F is a true and accurate copy of a January 7, 1972 letter from UMC's Paul H. Einhorn to Old Monsanto's H.S. Bergen regarding a blanket liability policy taken out by UMC through Travelers Insurance Company ("Travelers") to cover the SUA.
  - g. Attached as Exhibit G are true and accurate copies of Six Certificates of Insurance dated January 17, 1972 to September 15, 1977 issued to Old Monsanto by Travelers.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 82 of 268 PageID

#: 1149

h. Attached as Exhibit H are true and accurate copies of three letters from UMC to Old Monsanto dated September 26, 1974, September 23, 1976, and May 31, 1977 regarding UMC's Certificates of Insurance.

- Attached as Exhibit I are true and accurate copies of four letters from Northwest Industries, Inc. to Old Monsanto dated January 17, 1972, September 22, 1972, September 2, 1977, and September 12, 1977 regarding UMC's Certificates of Insurance.
- j. Attached as Exhibit J are true and accurate copies of three letters from Monsanto to UMC's President Paul H. Einhorn requesting updated Certificates of Insurance for Monsanto's records dated September 1, 1976, March 24, 1977, and August 2, 1977.
- k. Attached as Exhibit K, is a true and accurate copy of a letter dated September 16, 1970 from Old Monsanto to Glen Rayno at UMC regarding a September 1970 visit to Old Monsanto by Glen Rayno of UMC to discuss PCBs.
- Attached as Exhibit L is a true and accurate copy of a February 25, 1974 letter
  from Old Monsanto to UMC's Vice President, N. Ray Clark confirming Mr.
  Clark's attendance at a February 28, 1974 meeting at Old Monsanto's Missouri
  headquarters regarding PCBs; a March 7, 1974 letter from Old Monsanto to
  UMC's Vice President, N. Ray Clark thanking Mr. Clark for attending a meeting
  regarding PCBs at Old Monsanto's Missouri headquarters on February 28, 1974;
  and the Minutes of Meeting on Proposed PCB Effluent Standards dated February
  28, 1974.
- m. Attached as Exhibit M is a true and accurate copy of UMC's Vice President, N. Ray Clark's confirmation that he would attend the Dielectrics Symposium put on by Old Monsanto in St. Louis, Missouri on September 23, 1974, regarding PCBs.
- n. Attached as Exhibit N is a true and accurate copy of a letter dated December 17, 1971 from UMC's Vice President, N. Ray Clark to Old Monsanto in Missouri regarding a November 11, 1971 meeting in St. Louis, Missouri related to Old Monsanto's purchase of certain capacitors from UMC, which Old Monsanto used to test its PCBs.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 83 of 268 PageID

 Attached as Exhibit O is a true and accurate copy of three letters dated June 22, 1976, August 24, 1976, and September 16, 1976, from UMC to Old Monsanto in St. Louis, Missouri regarding PCBs.

p. Attached as Exhibit P is a true and accurate copy of four letters dated October 4, 1976 from Old Monsanto to various UMC employees regarding Old Monsanto's decision to cease manufacture of PCBs effective August 31, 1977.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18, 2018.

Robert G. Kaley, II Ph.D.

STATE OF MISSOURI ) SS CITY OF SAINT LOUIS )

On the \_\_\_\_\_day of January, 2018, before me personally appeared Robert G. Kaley, II Ph.D. to me known to be the person described in and who executed the foregoing Affidavit and who did state that the averments contained therein are true and correct to the best of his knowledge and that he executed the Affidavit of his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

My term expires: Mana 30, 5

PATRICIA C. WHITE Notary Public - Notary Seal State of Missouri Commissioned for St. Charles County

My Commission Expires: March 30, 2019 Commission Mumber: 15497880 Notary Public

or Cushete

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 84 of 268 PageID

#: 1151

February 7, 1972

Mr. Paul H. Einhorn, President
Universal Manufacturing Corp. (Electronic Corporate)
29-51 East Sixth Street Swind worthwest Industrial
Paterson, New Jersey 07509

Dear Mr. Einhorn:

Thank you for signing and returning the "Special Undertaking By Purchasers of Polychlorinated Biphenyls" document. It has now been signed by Monsanto and we are enclosing a copy for your files.

Everything appears to be in order and we look forward to the opportunity to continue the supply of material to Universal Manufacturing.

Thank you for your cooperation in this matter.

Very truly yours,

Howard S. Bergen, Jr. Director Specialty Products

/jf Enclosure

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age: 85 of 268 PageID

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

Special Undertaking by Purchasers of Polychlorinated Bighenyls

Monsanto Company (Monsanto) manufacturers certain polychlorinated biphenyls products (PCB's) which Universal Manufacturing Corporation (Buyer) desires to purchase. While buyer desires to purchase PCB's because of certain desirable flame resistant and insulator properties, Buyer acknowledges that it is aware and has been advised by Monsanto that PCB's tend to persist in the environment; that care is required in the handling, possession, use and disposition; that tolerance limits have been or are being established for PCB's in various food products.

Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and Buyer is willing to agree to such undertakings with respect to sales and/or delivery of PCB's by Monsanto to Buyer.

Accordingly, Buyer hereby covenants and agrees that, with respect to any and all PCB's sold or delivered by or on behalf of Monsanto to Buyer on or after the date hereof and in consideration of any such sale or delivery, buyer shall defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities, claims, damages, penalties, actions, suits, losses, costs and expenses (except to the extent arising from failure of PCB to conform with specifications) arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under Buyer, whether alone or in combination with any other substance, including without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

All existing contracts for the sale of PCB's by Monsanto to Buyer are hereby amended to contain the provision set forth above.

Nothing herein shall create or imply, any duty or obligation of Monsanto to sell or deliver any PCB's to Buyer. No conditions, undertakings or agreements purporting to modify the terms hereof shall be binding unless hereafter made in writing specifically referring to this agreement and signed by the party to be bound and no modification or variance of the above undertaking shall be effective by the acknowledgement or acceptance of any sale document, purchase order, shipping instructions or other forms containing terms or conditions at variance herewith.

Univers	sal Manufacturing Corporation
	(Buyer)
BY:	al Main land.
TITLE:	President
DATE:	January 7, 1972

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BY: OF COMPANY

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**EXHIBIT A** 

**EXHIBIT B** 

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EXHIBIT B

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PAGE 189

FOR DEL 1972

PRODUCT/CUSTONER SALES REPORT.

B1131-A DIRECT #2 01/09/73

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PAGE 190

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1237	STEVENS PAPER S HADLEY FALL MA STEVENS PA MILLS MESTFIELD MA		009*		009°	009*												00139238
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	SELECTRO MAG MOUNT VIEW CA SELECTRICAL UTILIT LA SALLE IL		102															100250899
4.0	UNIV MFG CORP BRIDGEPORT CT		384														Ì	10025796
-	ARENT CUST. TOT-ELECTRON IC COM		671						Ĭ			4						10025796
	ESSEX CHEM SAYREVILLE NJ		12.0															10026687
1237	.GARLOCK PALMYRA NY		.055		Ī		75.00 h	41		,				П			Ì	10030498
1																		
-																	T	
+			,				1	1	İ	1	Ì	1	1	1	T	1	1	

PAGE 192

FOR DEC. 1972

PRODUCT/CUSTOMER SALES REPORT

G1131-A DIRECT #2

MAJR-GRDGP.	98-000-16	10015308	10025796	10031761	.10031850	00153958	10089786	91-000-8666		1050-218-16	10089786	1050-218-16	#:	100	56									
DEC	2D									34			1671			185								
NOV.	024									0228			1859		3191	670						e i		
OCT.											H		1394	2477	_	215	Ц							
SBPT.							,						304		2741	573							F	
AUG.						Ī,							1933.		_	633								
JULY													1042		2004	421								
NS.		-156							10.				1191.	2347	_	486								
MAY		-144		1 =					10.				333		3036	622								
APR		V, Jij									Ĺ		1608		_	844								
MAR				112	112			112	20°5				2693		4510	816								
F.							1			7	8.25	1.98	306	2695	-	999								
JAN		.880	•			1.20		2	2.1		8.25	1.98	2375.		3872	705		1						
YID. JAN.		-880		.112	112	1.20		114	22.3		16.5	3.96	20677	34514	1000	1889				Ī				
FOR CURR.													2926		31683	5577								
TENTIAL YEAR		29.54	95.7	826 .248	922	1.22	6.00	962	: 172		8.25	8.25	15925	31037		2630						Ī		
POTENTIAL												: 0	29262		31693	5579								
NAME OF PRODUCT/CUSTOMER	DIOT: DREEFFERENCE	.E I DU PONT DE NEM CLINTOM IA	.UNIV HFG CORP BRIDGEPORT CT .GEN ELEC ROME GA	GEN ELEC HUDSON FALLS: NY	PARENT CUST. TOT-SEN ELEC SCHENE	HERCULES INC TERRE HAUTE IN	.MESTINGHOUSE BLOOMING TON IND .MOODMONT PRO. HUNTINGDON: VAL. PA	DUCT * * * * * * *	0Z4420. * * * * * * * 8 8	<b>一种,一种,一种,一种,一种,一种,一种,一种,一种,一种,一种,一种,一种,一</b>	.WESTINGHOUSE BLOOMINGTON: IND	101AL PRUDUCT 5 5 5 5 6 5 LB 02283A 5 5 5 5 5 5 5	30 TOT CLASS CAPACITOR FLUIDS: LB: 17275:	6 THE PG DIFFECTRICS DR.C. P. 18			×							,

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**EXHIBIT B** 

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 90 of 268 PageID

2	SLS SLS	NAME OF PRODUCT/CUSTOMER	POTENTIAL	YEAR	FOR CURE.	CURR.	JAN.	FB.	MAR.	APR.	MAY	INE.	JULY A	AUG. SEPI	PT. OCT.	NOV. DEC		CUST. LO. / MAJR-GRD-GP.
######################################		DISC PCB PCT									-					024428	8666	71-000-8666
### TOTAL TOTE I DUPDRY BILK   26.7  550   .	58	E I DUPONT NEMOURS STRANG		3.00											-		100	10024072
		PARENT CUST. TOT-E I DUPONT BILM		26.7		-266-	069			-				-	H		100	10023564
	00			.360							-			-	-		100	100266167
- JUNANIC FERGE CURP ORFORD IN 1290 - 600	5 4			2.08													100	10024315
CASTAMN KODAKE CH ROCHESTER NOT	10 6			3.00								-		H	-		100	00186945
TEAN EASTMAN ALONG LONG MERCAN ALONG   1.10   1.10   1.600   1.600   1.600   1.10   1.10   1.600   1	10			051		1	1	T	1	t	T	T	+	H	+		100	10024439
### TOTALEN CURP BALYN NY  - EATON ALLEN CORP BALYN NY  - EATON CARP HICKORY NG  - EATON CORP HICKORY NG  - EATON CORP HICKORY NG  - EATON CORP KENTAN NG  - EATON CORP KENTAN NG  - EATON CORP KENTAN NG  - EATON CORP REDECROENT CT  - EATON CORP REDECROENT NA  - EATON CORP CARPING AND CORP REDICATION  - ENGEL REPORTE PAINT S PLAINED NA  - EATON CORP PORTILE NA  - EATON COR	400			2000		9			200	1		1	+	+	-	Ž	868	10079292
SECTION ALEN CORP BALYN NY   Section   Secti				.116		009			009								100	10025125
ENGINEER OF STREET WATCHING GRAND 1 MT - 500  ELECTROCLOUR NEURIN GRAND 1 MT - 500  ELECTROCLOUR NEURIN CT - 22.0  ELECTROCLOUR SERRIN CT - 22.0  ELECTROCLOUR STREET STREET	OMO		500	5.44	2009						1					8	100	10025141
- ELECTROLUL DISCREDING TOT 27-0  - UNIVER CREED WILD CALL TOT 27-0  - LET HOWITE CHER PARKENER I T. 27-0  - ELE HOWITE CHER PARKENER I T. 25-0  - ELE HOWITE CHER CHEC CLEEFE DH  - ENERSON CHEMIT FOR CAMINE MY - 600  - ENTRY ON CLEATING CLEFE DH  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY OF CHEMIT S NEMBERS WILL - 600  - ENTRY OF CHEMIT S NEMBERS WILL - 600  - ENTRY OF CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEMBERS WILL - 600  - ENTRY ON CHEMIT S NEWBERS WILL - 600  - ENT	MW			.500			18			1			-	+			100	00117412
### ### ### ### #### ### ### ### #### ####	00	.UNIV MFG CORP BRIDGEPORT		27.0										-			100	10025816
#### #################################	ON			1.94			1		Ī								100	10008670
- EMERSON ELECTRIC RACKNE MA	O N			2.50													100	10026060
### ### ### ### #### #### ### ### ###	04	*EMERSON-CUMING INC CANTON NA *EMERSON ELECTRIC RACENE MISC		2.00	1		0.00										000	00216801
-ENGELHARD INDUSTRIES NEWROK: N. 3-500 1.00 1.00 1.00 1.00 1.00 1.00 1.00 1			Ī	0090										H			100	10026202
-ENTERPRIZE PAR350 -1-50 -250 -250 -250 -250 -250 -250 -250 -	NO	_		3.00			00-							=			100	10026318
-ENVIRDGENICS CO PARAMOUNT CA050	00	SENTER INC LITTLE SENTE		.500			2	.250	•55		T						001	00261173
-EPOXYLITE EL MONTE CA050 -ESCO CORP PORTLANO OR500 -ESSEX CHEM LA MIRADA CA	00	-EDNAIR INC BAKER		.050		1	.050										005	00249645
-ESSEX CHEM LA MIRADA CA 20.2 25.2 25.2 25.2 ESSEX CHEM SAYREVILLE NJ 39.5 25.2 25.2 25.2 29.7 30.8 5.6 25.2 2 20.2 2.20 2.20 2.20 2.20 2.20 2.	0 0	_		.500										-			001	00248200
-EVANS ADHESIVES COLUMBUS OH 4.00 2.20 2.20	00	ESSEX CHEM		39.5			-	25.2						×			100	10026587
-EVANS ADHESIVES COLUMBUS OH 4-00 2-20		TOT-ESSEX CHEM		F.65		30-8	-	25.2									100	10026679
	01	. EVANS ADHESIVES COLUMBUS		4.00	17		07-			- 1							005	00211788
		ī			Ī		7							-				

**EXHIBIT B** 

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PAGE 254

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01/09/13	-IN ACTUAL POUNDS	US AMD	THE SME DISTRIBLE	1				
	POUNDS DOLL	SALES	POUNDS	SALES	TOTAL LAST Y	VEAR SALES	TOTAL YEAR. SDAL LBS	CUST ID
ELECTRIC MEG REPAIR BETHEL P	P	4		- in a section of the section of			AR 233770	00253138
1 20						200	AR 233430	00233781
1966 TRANSFORM PYRANGL ALBRAR		-			5.400	1,485		1050-300-16
ELECTRIC SERV NEW BEDFORDER	The second section of the section of the sect			0.00			AR 999999	00251542
1270 INERTEEN 100-42					011	246		1050-215-16
ELECTRIC SERV HANTHNE MJ 1237 TRANSFORM PYRANGL A13636	The second state of the se		619	152			A.	10025737
ELECTRIC SERVICE CINCINNATI DH	<b>X</b>		Same is former and the same of		6.750	1,519	AR 233975	00196576 00196576 1050-300-16
ELECTRIC SERV CO ALGOA TENN							AR 233945	00270764
1932 TRANSFORM PYRANDL A13838					519	152	1	1050-300-16
ELECTRO MAG HOUNT VIEW GA 1866 AROCLOR 1242					1,200	200	AR 234258	00250899 00250699 1040-240-16
ELECTRO MAGNET FI PALO ALTO CA	4	-	909	156			AR 23425E	00287040 00287040 1040-016-16
ELECTRICAL UTILIT LA SALLE IL ELECTRICAL UTILIT LA SALLE IL							AR 234158	10025745
1134 AROCLOR 1016	43,320	8,881	299,960	117,409	87,160	15,166	1,000,000	1040-016-16
- Thomas	43,320	8,881	599,960	117,409	789,620	137,316	2,000,000	10025745
ELECTRO ENG MKS SAN LEAMORO CA	<b>V</b>						AR 234239	10025753
1866 TRANSFORM PYRANOL AL3B3B					8,100	2,229		1050-300-16
SELECTRON IC COM BRIDGEPORT CT UNIV NFG CORP BRIDGEPORT CT 1237 AROCLOR 1016 1237 AROCLOR 1242	\$T 002.566	19,414	1,093,300	215,132	362,200	64,089	AR 797742	10025796 10025796 1040-016-16 1040-240-16
7 AROCLOR 1254		2.5			26,400	5,465		1040-280-16

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Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Page: 93 of 268 PageID Doc. #: 1-7 Filed: 02/20/23 160

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**EXHIBIT B** 

JC. 4.20 UV	002071121	D00. 11.	
			#: 11

VIANSTERNER PREMIUR A.1838-3   VIANSTERNER PREMIUR A. 1832   VIANSTERNER PREMIUR A. 1832   VIANSTERNER PREMIUR A. 1832   VIANSTERNER PREMIUR A. 1842   VIANSTERNER PREMIUR A. 1844   VIANSTER PREMIUR A. 1844   VIANST	L	NAME OF PRODUCIJONER		YEAR	SALES FOR CURR.	CURR.	JAN	FB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SBT.	OCT	_	DEC	CUST. I.D. / MAJRGRDGP.
AMOCION 1016  AM		TRANSFORMER PYRANOL AL3838-3		M			Z								ij		_	44	1050-305-1
AMOUGN 1016	-	70 TOT CLASS TRANSFORMER FLUT LB	118		-		310				194			230			1532 311	726 143	
**************************************		AROCLOR 1016								1					4 1		022.5	1	1-910-0501
**ESTERNOR ELECTRICAL ENTONE NAT.   1400   1662   1400   665   1505   15	287	- AEROVUX-BELLVIL				1840	63	181	-1.5	200	203	92	175	183	181	16	268	16	00294438
TATIONIS PECKLS TECKNISH OF A 30.0 19.6 30.0 19.6 30.0 19.7 12.12.6 3.6 6.0 10.8 17.2 12.0 3.6 17.2 12.0 1	15 3	MESTERN ELECTRIC	1400	1663	1400	- 055			-		F								10001013
*** SERVINE UTILITY EXTREMENT TO NAME	985			19.6	40.0	1.80	4.6	4 8	-	08.	2.4	4	-	8-01	_	12.0	3.6	7.2	00298581
UNITY WEE CURP ENDOGEDRAY CT.  UNITY WEE CURP ENDOGEDRAY CT.  UNITY WEE CURP TIDINA NA.  SECRETARY MARKET TP PARCH THE CURP TIDING 1923 192 193 194 194 194 194 194 194 194 194 194 194	1 5	_	800	900	800	USZI	87	571		131	99	131	_	989	-	126	14	139	10025745
UNIVARE CIRP IGIDIAM NJ  UNIVAR CIRP IGIDIAM NJ  UN	287		006	1053	005	1453	93	16	185	93	597		93	16	16	181	90	182	10025796
THE REPORT IN COLLIGATION AND LEGGED AND AND LEGGED AND AND LEGGED AND AND LEGGED AND AND	5	UNIV MEG CURP TOTOWA NA	0007	825	1000	913	16		181		92	26		16	16	16	26	6	00165018
**CHANGE CHANGE TEP TRAIN AND CALLED STORE STORE AND STORE STORE AND STORE STORE AND STORE STORE AND STORE		PARENT CUST. TOT-ELECTRON IC CUM	F	8161	1500	2366	184	16	365	93	355	35	93	781	781	212	781	512	10025796
-GENERIC PITTSFIELD HANDER NY 18-20 50-0 50-0 50-0 50-0 50-0 50-0 50-0 5	13 2	_	-	1612	1500	1423	66	_	600	111	16	91	-	911	83	181	175	93	000287040
Care Field Houston Falls NY   Sand State	200	-		1.20	50.0			Ī											10027861
-GUDERAN CO CHICAGO IIIHIGH FHEREY INC ESCANDED CAHIGH FHEREY INC SAN OLEGOHIGH FHEREY INC SAN OLEGOHIGH FHEREY INC ESCANDED CAHIGH FHEREY INC SAN OLEGOHIGH FHEREY INC SAN	55	GEN	8500	5750	8500	2471	766	192	191	385	288	190	183	114	375	96	377	397	10031931
-GUDERAN CO CHICAGO ILL -HIGH FRENCY RAY ESCREDIOU CA -HIGH FRENCY RAY SECREDIOU CA -HIGH FRENCY		PARENT CUST. TOT-GEN ELEC SCHNEC	8500	7882	8500		1053	199	952	479.	955	857	999	.565	563	566	1229	683	10599474
-HIGH ENERGY INC EXCORDING CA 13-2 6.00 6.00 6.00 6.00 6.00 6.00 6.00 6.0	4		Ť	2-40		2.40	2-40	Į						Ī					1 0035937
-HIGH ENERGY MESTRIELD MASS -HIGH ENERGY MESTRIELD MASS -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN DAMPEN -HIGH ENERGY MALVEN	10 4	4		13-2		00-9		00.9			ī								00295892
JATHO LCAPANY INC BENNINGTON VI 450 632 450 963 94 93 88 84 84 173 88 84 93 83 83 84 93 83 83 84 93 83 83 83 84 93 84 95 89 176 92 89 176 89 176 92 89 176 89 176 92 89 176 92 89 176 92 89 176 92 89 176 89 176 92 89 1	22	HIGH ENERGY MESTFIELD MASS	100	141	100	175			100	1.0	ī				-	45.1	42.2		10037964
**ACLURY CAPACITUR MAYNESBUR: IN 1100 135F 1100 1548 90 192 84 186 184 96 89 176 90 88 176 92 **ACGRAH EDISON PUR FERNDALE NI  **ACGRAH EDISON PUR FERNDALE NI  **ACGRAM EDISON GREENHOUD SC ***ACGRAM EDISON GREENHOUD SC ***ANDERS ASSOC NASHOA NI  **SANDERS ASSOC NASHOA NI  **SANDERS ASSOC NASHOAN NI  ***SANDERS PARTLES NESTFIELD NA  ***SANDERS NA	E =	*JARD CCMPANY INC BENNINGTON VI	450	-165	450	696	94	93	88	48		84	173	88		448	63	83	10071429
### PAKENI CUSI - IUI-#IGRAW EUISUN U 800 933 250 1048  - MICHAM EDISUN GREENNUUD SC	D- m	** HALLURY CAPACITUR MAYNESBU	7	1355	1100	10.8	06	761	42	186	-	96	83	9/1	96	88	176	36	00302279
PAKENI CUSI. TUI-MCGKAM ELISUN U 800 933 250 10.8	T	1		523	250								(C)						01682100
**AUCHTAN EDISON GREENMOUD SC 400 467 65.60 6.600 8.50	1	PAKENI CUST. TUI-MCGRAM EUISUN C	008 .	933	052	10.8						8.01							00044687
**SARGAMU ELEC. PICKENS SC. 800 1279 80.*4 88.*8 95.*6 176 91 90 8.*5 87.*8 92. 192 58. 176 91 90 8.*5 87.*8 92. 192 58. 192 58. 192 58. 193 59. 193 5	5.4		ant-		400	_			l		II	Ti	6009		93.4		5.16	91.7	00290696
-51FPENS PA MILLS NESTFIELD MA	22	-	1400	1052	1400		26	-	93	95	-	91			81.8	412	26	26	DL141001
009- 009- 009- 009- 009- 009- 009- 009-	C 3		1400	1717	1400	2143	98		192	382	161	_	16			161	96	192	10076137
	12	MESTINGHUUSE TERRE HAUTE IN		7.80		7.40			009	7			009.			009			96088200
					1	-		0									4		

PRODUCT/CUSTONER SALES REPORT

PAGE 185

FOR DL. 1973

81131-4 DIRECT #2

Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Doc. #: 1-7 Filed: 02/20/23 #: 1161 Case: 4:23-cv-00204-HEA Page: 94 of 268 PageID

POUNTOS   DOLLARS   FOLNOS   DOLLARS   GAAL LBS   MAJR-GRU-GP	NICC SPECIALTY PRODUCTS NO.4 CUSTOMER/PRODUCT SALES REPORT FOR  —IN ACTUAL POUNDS AND DOLLARS— TOTAL MONTH SALES
1,600   783   12,150   3,220   4,313   6,075   1,610   4,313   1,249,970   256,225   1,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   4,000,000   2,0	
12,150	
12,150 4,313 12,150 3,220 AR 209223 12,150 4,313 18,225 1,610 4,830 8,850 4,944 1,249,970 256,225 1,000,000 965,535 291,494 1,249,970 256,225 1,000,000 914,365 291,494 1,249,970 256,225 1,000,000 914,365 291,494 1,249,970 256,225 1,000,000 1,080,100 323,374 1,360,900 277,686 1,400,000 1,950,270 271,524 913,000 187,168 1,400,000 1,950,270 27,377 2,273,900 464,854 2,500,000 5,400 2,377 48,234,239 5,400 2,377 1,200 372 48,234,239 1,200 513 1,400 4,504 1,200 4,527 13,480 4,546,854 2,500,000 1,956,2 45,527 13,480 4,546,854 1,200 1,900,66 4,545 13,480 4,546,854 1,300 1,900,66 4,527 13,480 4,52378	
12,150	*
965,535 287,451 1,249,970 256,225 1,000,000 6,850 291,494 1,249,970 256,225 1,000,000 1,080,100 323,374 1,360,900 277,686 1,400,000 1,080,700 271,524 913,000 277,686 1,400,000 1,950,270 271,524 913,000 187,168 1,100,000 1,950,270 595,232 2,273,900 464,854 2,500,000 5,400 2,377 AR 234,239 5,400 2,377 AR 234,239 1,200 513 1,200 AR 234,238 1,200 109,862 45,527 13,480 4,246 1,300	4
1,080,100 323,374 1,360,900 277,686 1,400,000 1,080,570 323,708 1,360,900 277,686 1,400,000 1,950,270 271,524 913,000 187,168 1,100,000 1,950,270 595,232 2,273,900 464,854 2,500,000 5,4400 2,377 AR 234239 5,4400 2,377 AR 234239 1,200 513 1,200 372 AR 234239 1,200 513 1,200 372 AR 234239 1,900 AR 242378	
669,700         271,524         913,000         187,168         AR 757742           1,950,270         595,232         2,273,900         464,854         2,500,000           5,440         2,377         AR 234239           1,200         513         1,200         372         AR 234258           109,662         45,527         13,480         4,246         1,300           14,828         3,929         AR 242378	91,800 33,691 91,800 33,691
1,950,270 595,232 2,273,900 464,854 2,500,000 100 5,400 2,377 AR 234239 105 1,200 513 1,200 372 AR 234258 105 109,862 45,527 13,480 4,246 1,300 105 109,862 45,527 13,480 4,246 1,300 105	
2,377 513 1,200 372 AR 234239 105 002 48,527 13,480 4,246 1,300 105 002 106 105 107 108 108 108 108 108	91,800 33,691
513 1,200 372 1,200 45,527 13,480 4,246 1,300 14,828 3,929	
45,527 13,480 4,246 1,300 105 002 002 NR 242378 105 105 105 105 105 105 105 105 105 105	
002 AR 242378 3,929 AR 242378	

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Doc. #: 1-7 Filed: 02/20/23 #: 1162 Page: 95 of 268 PageID

		-IN		SAMUS	1	POUNDS A	AMD DOLLARS	LLARS	,						ale N			
SI E	NAME OF PRODUCT/CUSTOMER	POTENTIAL	TEAR	YEAR FORCURE.	CURR	JAN	E	MAR	APR.	MAY	JUNE	JULY	AUG. S	SEPT. C	OCT.	NOV.	OEC.	CUSCIO./
																		i
	LO DIELECTRICS C.PATON										Г				1	-	T	
1	AROCLOR 1016															02250A		10-0-010-1
	*AERUVUX-BELLVIL NEW BEDFUKU MA		1915	1800	999		16	96	16	16		96	68	16	16	183	35	002594-538
	CAPACITOR SPECIST ESCONDIDO CA	120	101	120	37.8	1.80	-	2.40	3.60	3.60	1.80	3.60 F	1.80 P	1.80	.20 5	2.40		00181374
269	* FOBE DEUTSCHMAN LABS CANTON MA *ELECTRICAL UTILIT'LA SALLE IL	1250	1.80	800	414		42.4	-600	84.6	Ī	38.5	1	10.00 B	30.7 6	62.23		6.03	10035568
	UNIV MEG CORP BRIDGEPORT CT.		1080	900	£ £	0.46	77	-		89.0	89.2		_		+	0-16	92-0	10025796
-	PARENT CUST. TOT-ELECTRON IC COM		1950	1700	1086	94	181		16	178	177			-16	16	56	.26	10025796
	*ELECTRO MAGNET FI PALO ALTO CA	1-00	1.20	1.00	.110			_									.110	00287040
	-CURNELL DUB ELEC. M BEDFURD MAS.		1538	1000	608		0-26	83.0	4-06	89.5		8-69	2	0-76	SA.	91.6	6.06	10031281
1652	GEN ELEC FORT EDWARDS NY GEN ELEC HUDSON FALLS NY		2280	4,000	3397	383	287	379	191	186	087	185	281 187	282	1188	285	186	10031931
-	PARENT CUST. TUT-GEN. ELEC SCHNEC		8699	SHTZ	5469	899	383	199	379	694	279	ne	894	02.5	659	381	283	10599474
	HIGH ENERGY MALVERN PA		129	100	1					Ī						-		10037964
	.JARD COMPANY INC BENNINGTON VI	1200	1003	750	271		90.5	2	45	86		2006	4	96	141	7-06	96	00216143
1693	ACGRAM EDISON PHR FERNDALE MI ACGRAM EDISON GREENWOOD SC	800	7.20 791	909	781	90	87	7	88	169		84		98	88		69	00290696
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**EXHIBIT B** 

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Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Doc. #: 1-7 Filed: 02/20/23 #: 1163 Page: 96 of 268 PageID Case: 4:23-cv-00204-HEA

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**EXHIBIT B** 

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Page: 98 of 268 PageID
November 26, 1975

Capacitor Division

UNIVERSAL MANUFACTURING CORP.

Filed: 02/20/23

902 CRESCENT AVENUE BRIDGEPORT, CONN. 08807 (203) 336-0161

**PURCHASE ORDER** 

Monsanto 800 N Lindbergh Blvd St. Louis, Mo.

9034

THIS NUMBER MUST APPEAR ON.
ALL BILLS AND PACKAGES.

PLEASE ENTER OUR ORDER AS FOLLOWS, OBSERVING SHIPPING AND BILLING INSTRUCTIONS EXACTLY AS GIVEN BELOW DATE REQUIRED F.O.B. SHIP VIA Sauget Net 30 QUANTITY DESCRIPTION PRICE UNIT 25 drums AROCLOR 1254 (600 lb drums) \$ .475 1b Confirming Order Mary Ann Wilson/EJ Wickson PLEASE SEND ALL INVOICES TO-UNIVERSAL MANUFACTURING CORP.

UNIVERSAL MANUFACTURING CORP.

UNIVERSAL MANUFACTURING CORP.

STREET OTEOS

PATERSON, NEW JERSEY OTEOS

PATERSON, NEW JERSEY OFEOS

ACKNOWLEDGE RECEIPT OF THIS ORDER STATING WHEN YOU WILL SHIP.

THIS ORDER MUST NOT BE FILLED AT HIGHER PRICES THAN LAST CHARGED OR QUOTED.

ALL SHIPMENTS MUST BE ACCOMPANIED BY A PACKING SLIP.

Capacitor Division

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E.J. Wickson

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EXHIBIT C

Electronically Filed - St Louis County - Ja

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

#: 1166

# Capacitor Division UNIVERSAL MANUFACTURING CORP.

July 15, 1976

Page: 99 of 268 PageID

902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 338-0161

PURCHASE ORDER

9265

Monsanto 800 N Lindbergh Blvd St. Louis, Mo. 63155

THIS NUMBER MUST APPEAR ON .
ALL BILLS AND PACKAGES.

PLEASE ENTER OUR ORDER AS FOLLOWS, OBSERVING SHIPPING AND BILLING INSTRUCTIONS EXACTLY AS GIVEN BELOW SHIP VIA F.O.B. DATE REQUIRED Net 30 Sauget UNIT PRICE DESCRIPTION QUANTITY AROCLOR 1016 This is a blanket order covering August - December 1976 We will be releasing approximately one tank car per month to be shipped to Bridgeport, Conn. per Jim Alley/EJ Wickson EQUAL EMPLOYMENT OPPORTUNITY: The Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, relative to equal employment apportunity and the implementing PLEASE SEND ALL INVOICES TO: Rules and Regulations of the Office of Federal Contracts Compliance are incorporated herein UNIVERSAL MANUFACTURING CORP. by specific reference. 29 EAST 6th STREET PATERSON, NEW JERSEY 07509

ACKNOWLEDGE RECEIPT OF THIS ORDER STATING WHEN YOU WILL SHIP.
THIS ORDER MUST NOT BE FILLED AT HIGHER PRICES THAN LAST CHARGED OR QUOTED.
ALL SHIPMENTS MUST BE ACCOMPANIED BY A PACKING SLIP.

Capacitor Division

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J. Wishow

EXHIBIT C E.J. Wickson

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

## Capacitor Division UNIVERSAL MANUFACTURING CORP.



April 29, 1977

Page: 100 of 268 PageID

902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

PURCHASE ORDER

No 9571

TTEL 6 0 AWW

Monsanto 800 N Lindbergh Blvd St. Louis, Missouri 63155

> THIS NUMBER MUST APPEAR ON. ALL BILLS AND PACKAGES.

PLEASE ENTER OUR ORDER AS FOLLOWS, OBSERVING SHIPPING AND BILLING INSTRUCTIONS EXACTLY AS GIVEN BELOW SHIP VIA F.O.B. DATE REQUIRED see below Sauget Best Way Net 30 PRICE UNIT DESCRIPTION QUANTITY AROCLOR 1016, approximately 90,000 lbs. ea. \$.66 1b 17 tank cars This is in addition to the three tank cars already on order for Bridgeport on PO 9526, which are scheduled for shipment between now and June 1. Ship one car to Totowa in May; then beginning in June 1977, through October 1977 ship one car each month to Totowa, N.J. and one car each month to Bridgeport, CT. In October, prior to terminal date of October 31, 1977, ship one additional car to Bridgeport and six additional cars to Totowa. These last seven cars will be used for additional storage, and will be returned as emptied. Details of shipping dates, and any changes in destination which may become necessary, will be arranged with appropriate advance notice. Drum packaging of some portion of the last increment may be PLEASE SEND ALL INVOICES TO: necessary if tank cars are not available. UNIVERSAL MANUFACTURING CORP. P. D. 80x 3028 29 EAST 6th STREET Confirming April 29 conversation PATERSON, NEW JERSEY 07509 N Ray Clark - James A. Alley 0021084

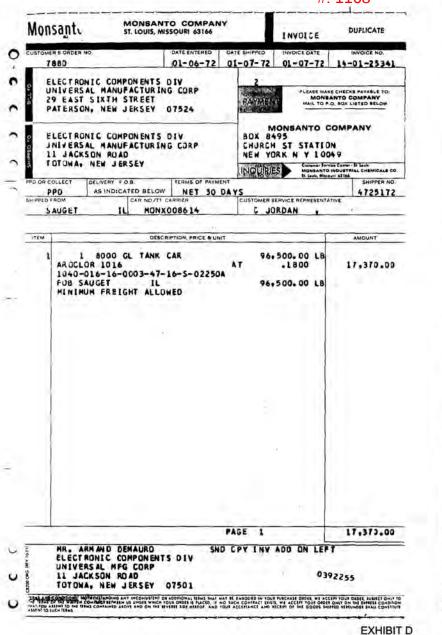
ACKNOWLEDGE RECEIPT OF THIS ORDER STATING WHEN YOU WILL SHIP. THIS ORDER MUST NOT BE FILLED AT HIGHER PRICES THAN LAST CHARGED OR QUOTED. ALL SHIPMENTS MUST BE ACCOMPANIED BY A PACKING SLIP.

cc: PH Einhorn C Hughes NR Clark

EQUAL EMPLOYMENT OPPORTUNITY: The Equal Employment Opportunity clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, relative to equal employment opportunity and the implementing Rules and Regulations of the Office of Federal Contracts Compliance are incorporated herein m specific reference.

Capacitor Division

E.J. Wickson



Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

#### TERMS AND CONDITIONS

- FORCE MAJEURE Deliveries may be suspended by either party in case of Act of God, war, ricks, fire, explosion, flood, strike, lakeryl, injunction, including the power, raw materials, labor, containers, or transpartation facilities, accident, breakage at material regularities, accident, breakage at material regularities, accident, breakage at material pulsarity an apportation, antiforate defense requirements, or any souse beyond the control of such porty, preventing the manufacture, shipment, acceptance, or consumption of a shipment of the goods of a material pulsar which the manufacture and the goods is dependent. If, because of any such circumstance, seller is unable to supply the total demand for the goods, all the goods is dependent, if, because of any such circumstance, seller is unable to supply the total demand for the goods, all the goods at the goods and the goods. Seller is unable to supply the total demand for the goods, all the goods are supply and the goods and the goods. Seller is unable to supply the total demand for the goods, and the goods are supply and the goods and the goods. The good is defended and the good of the good o
- 2 RUYER'S CREDIT. Selier reserves the right, among other remedies, either to terminate this controct or to tespend further individually under it in the event Buyer fails to pay for any one shipment when same becomes due. Should Buyer's limited integration with the event Buyer fails to pay for any one shipment when same becomes due. Should Buyer's limited in the properties of the required by Sellar for follower delivers and for goods therefolare delivered.
- 3 WITCHTS AND CONTAINERS. In the case of bulk carlood, tank car, or tank truck shipments, shipper's weights shall govern Where shipment requires use by Seller of carboys, drams, barrels or other returnable containers, title to such containers which remains an Seller and a deposit in the amount required by Seller must be made of the time the goods are point for Such container must be kept in good condition and may not be used for any material other than that shapped therein and must be returned within city (60) days from date of shipment. On such containers being so returned in good condition as a shape of the unique of the u
- 4 SHIPMENIS. The quantity shipped in any contract month may be limited by Seller to either: (a) the average of the monthly quantities critered by Buyer bereunder for the preceding contract months, or (b) the maximum quantity covered by this contract devided by the number of months in the contract period. Seller shall not be bound to tender delivery of any quantities for which Buyer has not given shipping instructions.
- 5. WARRANIY, Unless otherwise provided herein, Seller warrons title and that all goods sold hereunder shall conform to Sellow's soundard specifications. Subject to the precoding sentence and except as otherwise expressly stated herein, SELER SMAYES NO REPRESENTATION OR WARRANIY OF ANY KIND, EXPRESS OR IMPLED, AS TO MECHANIABILITY, FITNESS MAYES NO REPRESENTATION OR WARRANIY OF ANY KIND, EXPRESS OR IMPLED, AS TO MECHANIABILITY, FITNESS TO PRENICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other substances. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and property thurspite resulting from the handling, possession or use of the goods by Buyer.
- 6 MMI OF HABILITY. All claims for alleged delective goods, shartage or other cause shall be deemed waived unless made in warring and societies by Sellar within filters (15) days after Buyer learns of the alleged delect, but in no event later flam year in an appropriate the sellar property of the goods. Buyer's exclusive remedy shall be for damages, subject, however, to take yield they after Buyer's recipit of the goods. Buyer's exclusive remedy shall be for damages, subject, however, to they after they are they
- PATENTS. Skiller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any volid U.S. potent. This warranty is given upon condition that Buyer promptly notify sold only from an act involving Buyer in which such infringement is alleged, and if Seller is affected, that Buyer permit Seller, to control completely the defense or compremise of any such allegation of infringement. Seller does not warrant that the area of any goods sold hereunder, or articles made therefrom, either alone or in conjunction with other materials, will not introger a patent
- I LOTICINI. TAXES. Any increase in freight rotes poid by Seller on shipments covered by this control and any tax or governmental charge or increase in some hereafter becoming effective increasing the cost to Seller of producing, selling, or delitering the goods or of procuring materials used therein, and any tax now in effect or increase in some payable by the Seller because of the safe of the goods, such as Seles fax, Use fax, Retailer's Occupational fax, Gross Receipts fax, may, an Seller's option, be added to the price herein specified.
- 71055 IN TRANSIT in case of breekage or loss in transit, Buyer shall have notation at same made an expense, bill beling
- THE PLASTIC MALERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for

  - DIASTIC MALBRIAS. Because or the Continuous and the
- 11 FAIR LARDR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- AMSCELLANEOUS. This contract is to be construed according to the lows of the State of Missouri. This document constitutes the full uniterstanding of the parties, and no terms, conditions, understanding or agreement purporting to modify an vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

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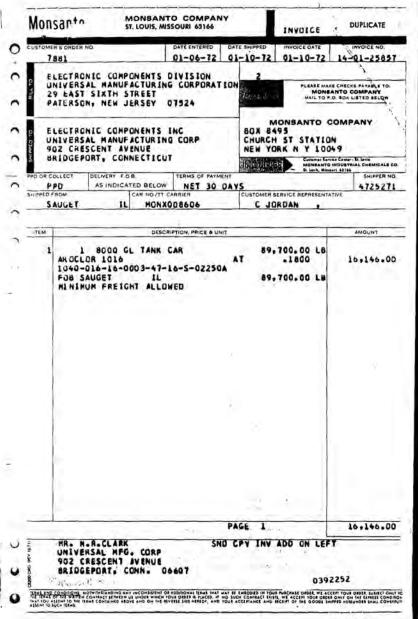
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**EXHIBIT D** 

Page: 102 of 268 PageID

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St Louis County - January 19, 2018 - 04:37 PM



**EXHIBIT D** 

EleRage: 103 of 268 PageID

Pronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1171

#### TERMS AND CONDITIONS

- 1. FORCE MAJEURE. Deliveries may be suspended by either party in case of Act of God, wor, riots, fire, explosion, flood, strike, locked, injunction, inhibity to obtain firel, power, few materials, labor, containers, or transportation facilities, occident, breakage of machinery at apparatus, national defense requirements, or any cause beyond the central of such party, preventing the inmidiation, acceptance, or consumption of a shipment of the goods or of an internal upon which the monolacture of this goods is depandent. If, business of any such circumstance, Seller is unable to supply the total demand for the goods, Sollar may allocate its available supply among itself and all of its customers, including those not under contract, in an equilable measure. Such deliveries so suspended shall be conceiled without liability, but the contract shall atherwise remain limitive ted.
  - 7. BUYER'S CREDIT. Sollor reserves the right, among other ramedies, either to terminate this contract or to suspend further deliveries under it in the event Buyer fails to pay for any one stipment when some becomes due. Should Buyer's financial responsibility become unsatisfactory to Saller, cash payments or satisfactory security may be required by Seller for future delivered on delivered.
  - 3 WEIGHTS AND CONTAINERS. In the case of bulk carload, tank car, at tank truck shipments, shippen's weights shall govern. Where shipment requires use by Seller of carbons, drums, barrets or after returnable containers, little to such containers shall remain in Soller and a deposit in the amount required by Seller must be made at the time the goods are paid for. Such container must be kept in good condition and may not be used for any material other than that shipped therein and must be returned within stay (60) days from date at shipment. On such containers being so returned in good condition, a refund of the deposit will be made.
- d SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to either: (a) the average of the mantity quantities ordered by Buyer hereunder for the preceding contract months, or (b) the maximum quantity covered by this contract divided by the number of months in the contract period. Seller shall not be bound to tender delivery all any quantities for which Buyer has not given shipping instructions.
- Superson of the superson of th with other substances. Sailer shall not be liable for, and Buyer assumes responsibility for, all personal injury and properly damuga resulting from the handling, possession or use of the goods by Buyer.
- 6. LIMIT OF HABILITY. All claims for alleged defective goods, shortage or other cause shall be deemed vaived unless made in writing and received by Sellar within filleen (15) days after Buyer learns of the alleged defect, but in no event later than sixty (60) days after Buyer's receipt at the goods. Buyer's exclusive remedy shall be for damages, subject, however, to Buyer's agreement that for any and all lasses or damages resulting from any couse whotover including ofleged defective and damaged goods, Seller's liability shall in no event exceed the purchase price thereot, or at the election of Seller, the repair in replacement all such defective or damaged goods. In no event shall Seller be flable for incidental or consequential standards. Transportation charges for the return of goods shall not be poid unless authorized in advance by Seller.
- 7. PATENTS. Saller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. potent. This warranty is given upon condition that Buyer promptly notify Soller of any claim or suit involving Buyer in which such intringement is alleged, and if Seller is affected, that Buyer permit Seller to control completely the defense or compromise all any such allegation of infringement in firther described and the extense of the production of the produc nfringe a patent
- 3. FREIGHT 1AXES. Any increase in freight rotes puid by Seller on shipments covered by this contract and any lax or governmental charge or increase in same herealter becoming effective increasing the cost to Seller of producing, selling, or delivering the goods or of procuring materials used therein, and any lax now in effect or increase in same poyable by the Seller hoteoute of the sold-call the goods, such as Seller hoteoute of the sold-call the goods, such as Seller hoteoute of the sold-call the goods, such as Seller hoteoute of the sold-call the price herein specified.
- 9,1055 IN TRANSII. In case of breakage or loss in transit, Buyer shall have notation of some mode on expense bill before
- 0. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for
- o product to be made up specially for Buyer:

  (1) A delivery of not less than 90% of the order will be considered a complete fulfillment of the order

  (2) In case of an over-run. Seller may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds.
- I FAIR LABOR STANDAROS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards. Act of 1938, and with all amendments thereto.
- 2 MISCELLANEOUS. This contract is to be construed occording to the laws of the State of Missouri. This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify or vary the terms of this document shall be binding unless hierafter mode in writing and signed by 1" amind.

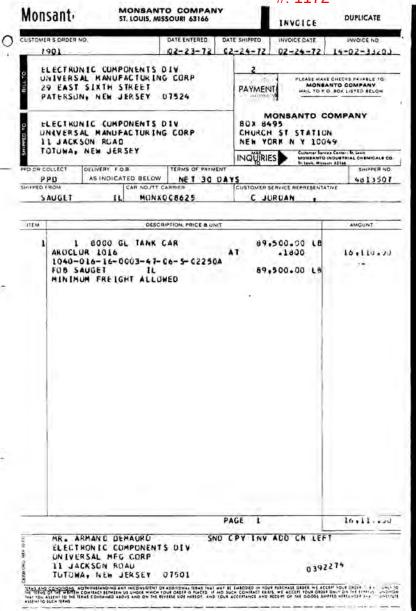
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Page: 104 of 268 PageID

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St Louis County - January 19, 2018 - 04:37 PM



**EXHIBIT D** 

ically Filed - St Louis County - January 19, 2018 - 04:37 PM

Doc. #: 1-7 Filed: 02/20/23 Case: 4:23-cv-00204-HEA

#### TERMS AND CONDITIONS

- FORCE MAPEUR. Deliveries may be suspended by either party in case of Act of God, war, riab, first, explasion, floud, stake, or knot, important, including to philar lact, nower, now noticefuls, babor, continuers, or transportation hacilities, accident flowings of ameliancy in apparents, surfaced delarge requirements, or any cause beyond the sourced stack party, presenting the numerication, slapment, acceptance, or consumption of a shipment of the goods or of a material upon which the insulation story in the quality is dependent. It, because of any sock intermediate, seller is unable to supply the total dominand for the quality in the goods of the contract stability in the contract stability in the contract stability in the contract shall administrate. month stort.
- 7 BUYER'S CREDIT. Sellior reservoir the right, among other convolues, wither to terminate this contract 61 to suspend further indivenes under it in the event Buyer fails to pay for any one shipment when some licromes due. Should Buyer's further of respinishfully become unsatisfactory to Seller, cash payments or satisfactory security may be required by Seller for future indivenes and for goods literatulated delivered.
- 3 WEIGHTS AND CONTAINERS. In the case of bulk carload, lank car, or fank truck shipments, shipper's weights thall greater. Where shipment requires use by Soller of carboys, drams, borrels or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be made at the time the goods are just be such container must be kept in good condition and may not be used for any material other than that shipped therein and must be returned within sidy (60) days from date of shipment. On such containers being so returned in specific multiture, a returned with the made.
- 4 SHIPMENTS. The quantity shipped in any control manth may be limited by Selter to either: (a) the overage of the munitify quantities ordered by Buyer hereunder for the preceding control manths, or (b) the maximum quantity covered by this control divided by the number of months in the control period. Selter shall not be bound to leader delivery of any truth. littes for which Buyer has not given shipping instructions.
- 5 WARRANTY. Unless otherwise provided herein, Seller warrants title and that all goods sold hereunder shall conform to Soller's standard specifications. Subject to the preceding sentence and except as otherwise expressly stated floroin, SEI) § 2-MAKES NO REPRESSENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLED, AS TO MERCHANTABILITY. FITNESS FOR PARTICULIAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with rather substances. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and properly damage resulting from the handling, possession or use of the goods by Buyer.
- 6. HMT OF HABILTY. All claims for alleged defective goods, shortage or other cause shall be deemed waived unless made as writing and received by Selfor within titleen (15) days after Buyer learns, at the alleged defect, but in no event later than surly (60) days after Buyer's receipt of the goods. Buyer's exclusive remedy shall be for damages, subject, however, the Buyer's agreement that for any and all losses or damages resulting from any cause whatsaver including altered industrial arranged goods, Selfer's Nobility shall in no event exceed the purchase price thoreat, or at the election of Solfor, the opinio at implication and deletive or damaged goods. In no event shall Selfor be liable for incidental or connequinted duringes. Transportation charges for the return of goods shall not be paid unless authorized in advance by Selfor.
- 7. PATENTS. Seller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer promptly north, soller of any claim or suit involving Buyer in which such intringement is alleged, and if Scaller is allected, that Buyer prompt Soller to control completely the defense or compromise of any such allegations of infringement. Soller does not written that the use of any goods sold hereunder, or articles made therefrom, either alone or in conjunction with other materials, will and
- 8 FREIGHT TAXES. Any increase in Treight rates poid by Seller on shipments covered by this contract end any lax in growth monthal charge or increase in same hereafter becoming effective increasing the cost to Seller at producing, soller, at delivering the goods or of procuring materials used therein, and any lax now in effect or increase in same psychiatric to Seller because of the sole of the goods, such as Soles fax, its fax. Retailer's Occupational Tax, Gross Receigts Tax, in vy, at Seller because of the sole of the goods, such as Soles fax, Use Tax. Retailer's Occupational Tax, Gross Receigts Tax, in vy, at Seller because of the price herein specified.
- 9 LOSS IN TRANSIT. In case of breakage or loss in transit. Buyor shall have notation of same made an expense full hetation
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic inaterials, where an order (still, \* a product to be made up specially for Buyer:

  11 A delivery of not less than 90% of the order will be considered a complete fulfillment of the order.

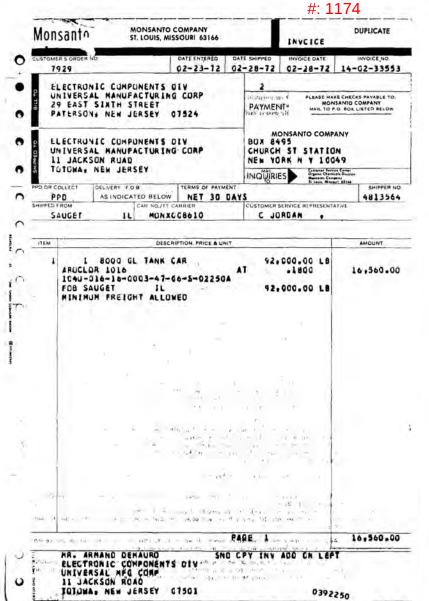
  121 In case of an over our, Seller may deliver and Buyer will procept any such excess up to 10% of the order, but a mare than 1,000 pounds.

  - are than 1,000 pounds.
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in complete section the requirements of the Fair Labor Standards. Act of 1938, and with all amendments thereto.
- 12 ANSCELLANEOUS. This contract is to be construed occurring in the laws of the State of Missouri. This document and the half understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify the law of this document shall be binding unless hereafter made in writing and ugged by the party to be bound.

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**EXHIBIT D** 

Page: 106 of 268 PageID Filed St Louis County - January 19, 2018 - 04:37 PM



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Pronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

TERMS AND CONDITIONS

I. FORCE MAJEURE. Deliveries may be suspended by either party in case of Act of God, wor, riots, fire, explosion, flood, strike, Cocket, Injurisher, anothing to obtain fuel, power, row moterials, labor, containers, or transportation footilities, occident, breebage of machinery or apparatus, national defense requirements, or any couse beyond the control of such party, preventing the manufacture, shipment, acceptance, or consumption of a shipment of the goods or do material upwhich the manufacture at the goods of a dependent, if, because of any such circumstance, Seller is unable to supply the total demand for the goods. Seller may sufficiently indicate its ovariables supply owner; such and oll of its customers, including those number under controct, in an aquatable manner. Such deliveries so suspended shall be cancelled without liability, but the contract shall otherwise remain unaffected

- 2 BUYER'S CREDIT. Seller reserves the right, among other remedies, either to terminate this contract or to suspend further delevaries under it in the event Buyer falls to pay for any one shipment when same becomes due. Should Buyer's lindrockal responsibility become unsatisfactory to Seller, cosh payments or satisfactory security may be required by Seller for future delivered.
- 3 WEIGHTS AND CONTAINERS. In the case of bulk corload, tank car, or tank truck shipments, shipper's weights shall govern White shipment requires use by Seller of outs corload, law car, or tank track shipments, shipper's weights shall govern, white shipment requires use by Seller of corboys, drums, barrels or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be made at the imme the goods are poid for. Such container must be kept in good condition and may not be used for any material other than that shipped therein and must be returned within sixty (60) days from date of shipment. On such containers being so returned in good condition, a returned of the deposit will be made.
- 4 SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to either: (a) the overage of the monthly quantities ordared by Buyer hereunder for the preceding contract manths, or (b) the maximum quantity covered by this contract divided by the number of months in the contract period. Saller shall not be bound to tender delivery of any quantities for which Buyer has not given shipping instructions.
- 5. WARRANTY. Unless otherwise provided herein, Seller warrants little and that all goods sold hereunder shall conform to Seller's standard specifications: Subject to the preceding sentence and except as atherwise expressly stated herein, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other substances. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and property damage resolving from the handling, possession or use of the goods by Buyer.
- 6. DMIT OF DABILITY. All claims for alleged defective goods, shartage or other couse shall be deemed waived unless made in writing and received by Seller within filteen [15] days after Buyer learns of the alleged defect, but in no event later than size (60) days ofter Buyer's receipt of the goods. Buyer's exceipt of the goods wayer's exceive remedy shall be for damages, subject, however, to Buyer's agreement that for any and all losses or damages resulting from any cause whatsoever including alleged defective or damaged goods, Seller's liability shall no event exceed the purchase price thereof, or at the election of Seller, the report or replacement of such defective or damaged goods. In no event shall Seller be liabile for incidental or consequential damages. Transportation charges for the return of goods shall not be paid unless authorized in advance by Seller.
- 7. PATENTS. Seller warrants that any goods sold pursuant to this controct, except as are made specifically for Buyer according to Buyer's specifications, do not intringe any valid U.S. patent. This warranty is given upon condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such intringement is alleged, and if Seller is affected, that Buyer permit Seller to control completely the delense or compromise of any such allegation of intringement. Seller does not warrant that the use of any goods sold hereunder, or pricties made therefrom, either alone or in conjunction with other materials, will not intringe a patent.
- 8 FREICHT TAXES Any increase in treight rates pold by Seller on shipments covered by this contract and any tax or govern-mental charge or increase in some hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the goods or of procuring moterials used therein, and any lar now in effect or increase in some payable by the Seller because of the sole of the goods, such as Soles Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may, at Seller's option, be added to the prize herein specified.
- 9 LOSS IN TRANSIT in case of breakage or loss in transit, Buyer shall have notation of some made on expense bill before
- 10 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for a product to be made up specially for Buyer:

  [1] A delivery of not less than 90% of the order will be considered a complete fulfillment of the order
  - (2) In case of an aver-run, Seller may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds.
- 11: FAIR LABOR: STANDARDS ACT. The malerial covered hereunder is warranted to have been produced in compliance with the requirements at the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12. MISCELLANEOUS. This contract is to be constitued occording to the laws of the State of Missauri. This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

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**EXHIBIT D** 

age: 108 of 268 PageID

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St Louis County - January 19, 2018 - 04:37 PN



age: 109 of 268 PageID

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St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

#### TERMS AND CONDITIONS

- I FORCE MAJEURE Deliveries may be suspended by either party in case of Act of God, war, riots, line, explosion, flood, strike, highwit, injunction, inability to obtain fuel, power, raw molerials, labor, containers, or transportation lacilities, accident, breakage higher, equivelient, installity to obtain fuel, power, row materials, labor, containers, or transportation facilities, occident, breakage of machinery in paper piece, national delense requirements, or any cause beyond the control of the party, preventing the number-large, thinment acceptance, or consumption of a shipment of the goods or of a material upon which the manufacture of the goods is dependent. If, because of any such circumstance, Seller its unable to supply the total demand for the goods. Seller interval following these manufactures are unable to supply the total demand for the goods. Seller interval following these manufactures are unable to supply and any other controls and all of its customers, including, those under controls, in an equilable property. matterted.
- 2 RUYER'S CREDIT. Soller reserves the right, among other remedies, either to terminate this contract or to suspend further deliverines under it in the event Bayer fails to play for any one shipment when some becomes due. Should Buyer's financial revines birty become unsatulated by to Seller, cash payment or satisfactory security may be required by Seller for future delivered.
- 3. WEIGHTS AND CONTAINERS, in the case of bulk carlood, tank car, or Tank truck shipments, shipper's weights shall govern. When a hipment requires use by Seller of carboys, favored by Seller must be made at the time the goods are paid for Such containers whill remain in Seller and a deposit in the amount required by Seller must be made at the time the goods are paid for Such containers us be kept in good condition and may not be used for any material other than flut shipped therein and must be returned within sixty (60) days from date of shipment. On such containers being so returned in good condition, a relund of the deposit will be made.
- 4. SHIPMENIS. The quantity shipped in any contract month may be limited by Seller to either: (a) the overage of the numbbly quantities ordered by Buyer hereunder for the preceding contract months, or (b) the maximum quantity covered by this punisher of months in the contract period. Selfer shall not be bound to tender delivery of any guan litios for which Buyer has not given shipping instructions.
- 5 WARRANTY. Unless atherwise provided herein, Seller warrants little and that all goods sold hereunder shall confi TRANSARY T. Unless atherwise provided herein, beller varrants little and that all goods sold hereunder shall conform to Sciller's standard specifications. Subject to the proceeding sentence and except os otherwise expessions, StateR MAKES INO. REPRESENTATION OR WARRANTY OF ANY KIND. EXPRESS OR IMPUED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other substitutes. Self-it shall not be liable for, and Buyer ossumes responsibility for, all personal injury and property diamage resulting from the handling, possession or use of the goods by Buyer.
- 6 (IMIT OF (IABILITY. All claims for alleged delective goods, shortage or other cause shall be deemed waived unless made in writing and received by Seller within litteen [15] days after Buyer learns of the alleged defect, but in no event later than sixty (60) days after Buyer's receipt of the goods. Buyer's exclusive remedy, shall be for damages, subject, however, or Buyer's agreement that for any and all losses or damages resulting from any cause whotsoever including alleged detective or triumaged goods, Seller's liability shall in no event exceed the purchase price thereof, or at the election of Seller, the repair or replacement of such delective or damaged goods. In no event shall Seller be liabile to incidental or consequential stamages. Transportation charges for the return of goods shall not be paid unless authorized in advance by Seller.
- 7 PATENTS. Sellur warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer promptly notify Saller of any stain on suit involving Buyer in which such infringement is alleged, and if Saller is affected, that Buyer permit Seller in control completely the defense or compromise of any such allegation of infringement. Seller does not warrant that the use of any goods sold hereunder, or articles made therefrom, either alone or in conjunction with other materials, will not
- 8 FREIGHT TAXES. Any increase in freight rates poid by Seller on shipments covered by this contract and any tax or governmental charge as increase in some hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the goods or of procuring materials used therein, and any tax now in effect or increase in some poyable by the Seller because of the total of the goods, such as Sales Tax. Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may, int Seller's notion, be added to the price herein specified.
- 9 1055 IN 18AF1517. In case of breakage or loss in transit, Buyer shall have notation of same made an expense bill before
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls to a product to be made up specially for Buyer.

  11) A dolivery of not less than 90% of the order will be considered a complete fulfillment of the order.

  12) In case of an over run. Selfer may deliver and Buyer will occept any such excess up to 10% of the order, but not

  - more than 1,000 pounds.
- IT FAIR LABOR STANDARDS ACT. The malerial covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Lobor Standards Act of 1938, and with all amendments thereto.
- 12. MISCELLANEOUS. This contract is to be construed according to the lows of the State of Missouri. This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound

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**EXHIBIT D** 

Page: 110 of 268 PageID Filed St Louis County - January 19, 2018 - 04:37 PM

Doc. #: 1-7 Filed: 02/20/23 Case: 4:23-cv-00204-HEA #: 1178 MONSANTO COMPANY ST. LOUIS, MISSOURI 63166 Monsanto DUPLICATE INVELCE 03-16-72 03-24-72 03-24-72 14-03-38734 7960 ELECTRONIC COMPONENTS DIVISION UNIVERSAL MANUFACTURING CORPORATION 29 EAST SIXTH STREET PATERSON, NEW JERSEY G7524 PLEASE MAKE CHECKS PAYABLE TO: MONBANTO COMPANY MAIL TO P.O. BOX LISTED BELOW **建设加州** MONBANTO COMPANY ELECTRONIC COMPONENTS INC UNIVERSAL MANUFACTURING CORP 902 CRESCENT AVENUE BOX 8495 CHURCH ST STATION NEW YORK N Y 10049 INQUIRIES. Custome ferrus Canto BRICGEPORT, CONNECTICUT MICALS DO. DELIVERY FOR SHIPPER NO. ORCOLLECT TERMS OF PAYMENT AS INDICATED BELOW NET 30 CAYS

CAR NO.7T CARRIER GUSTOMER SERVICE REPRESENTATIVE SHIPPED FROM 4857421 SAUGET MONXCOB619 C JORDAN . ITEM DESCRIPTION, PRICE & UNIT AMOUNT 1 8000 GL TANK CAR AFCCLUR 1016 1040-016-16-0003-47-06-5-02250A FOB SAUGET IL 90,800.00 LB 16,344.00 9C,8CC.CO LE PLUS FREIGHT FROM SAUGET AT 91920 RATE 1.7323 C . 1L 1,572.93

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

### TERMS AND CONDITIONS

- FORCE MAJEURE Deliveries may be suspended by either party in case of Act of God, wor, riots, fire, explosion, flood, strike, lackant, injunction, inability to obtain fuel, power, row materials, labor, confainers, or transportation lacilities, accident, breakage of enachinery or apparatus, national defense requirements, or any cause beyond like control of such party, provening the annualizations, shipment, acceptance, or consumption of a shipment of the goads or a material upon which the manufacture of the goads is dependent. If, because of any such circumstance, Seller is unable to supply the total demand for the goads. Suller may affected at available supply among itself and all of its customers, tending those update contract, in an equipable manner. Such deliveries so suspended shall be cancelled without liability, but the contract shall otherwise remain meditated. I FORCE MAJEURE Deliveries may be suspended by either party in case of Act of God, war, riots, fire, explosion, flood, strike,
- 2. BUYER'S CREDIT. Seller reserves the right, among other remedies, either to terminate this contract or to suspend further didiverses under it in the event Buyer fails to pay for any one shipment when same becomes due. Should Buyer's trianskal responsibility become unsatisfactory to Seller, cosh payments or satisfactory security may be required by Seller for luture includence and for goods theretoloric delivered.
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- 5 WARRANTY. Unless otherwise provided herein, Seller warrants title and that all goods sold hereunder shall contain the WARRANTY. Unless otherwise provided herein, Seller warrants title and that all goods sold hereunder shall conform to Seller's standard specifications. Subject to the presenting sentence and escept as otherwise expressly stated herein. SELLSR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS 10 MERCHANTABILITY. FITNESS FOR PARTICULAR PURPOSE, OR ANY CHIER MATTER WITH RESPECT TO THE GOODS, whether used alone or in continuation with other vehiblances. Selfer shall not be liable for, and Buyer assumes responsibility for, all personal many and properly demander casulting from the handling, possession or use of the goods by Buyer.
- 6 HIME OF HABILITY. All claims for alleged defective goods, shartage or other cause shall be deemed warved unless jumps in writing and received by Salier within lifteen (15) days after Buyer learns of the alleged defect, but in no event later Paus sirty (60) days after Buyer's receipt of the goods. Buyer's exclusive remedy shall be for damages, subject, however in Buyer's agreement that for any and all losses or damages resulting from any cause whatsoever including altered defloction or slauminged goods. Selfer's lability shalls in no event exceed the purchase price thereof, or at the election of Selfer, the require replacement of such defective or damaged goods. In no event shall Selfer be liable for incidental or consequential damages. Transportation charges for the return of goods shall not be paid unless authorized in advance by Selfer.
- 7 PATENTS Saller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer promotely notify soller of any claim or suit involving Buyer in which such infringement is alleged, and it Seller is affected, that Buyer permit soller to routed completely the defense or compromise of any such allegation of infringement. Seller does not warrant this use of any goods sold hereunder, or articles made therefrom, either alone or in conjunction with other materials, will not intringe a patent.
- 8 FREIGHT TAXES. Any increase in freight rates good by Seller on shipments covered by this contract and any tax or governmental charge or increase in same hereafter becaming effective increasing the cost to Seller of producing, writing, are influenting the goods or of procuring materials used therein, and any tax now in effect or increase in same payable by the Seller increase in same payable by the Seller increase of the sole of the goods, such as Sels Tax. Retailer's Occupational Tax. Gross Reteipts Tax. may, at Sellar's uption, be added to the price herein specified.
- 2 1055 IN TRANSIT. In case of breakage or loss in transit, Buyer shall have notation of same made an expense bill Induse
- 10 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for a product to be made up specially for Buyer;

  11) A delivery of not less than 90% at the order will be considered a complete fulfillment of the order.

  12) In case of an over run, Seller may deliver and Buyer will accept any such excess up to 10% of the order, but and
  - more than 1,000 pounds.
- 1) FAR LABOR STANDARDS ACT. The material covered herounder is warranted to have been produced in compliance the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 17. MISCELLANEOUS. This contract is to be construed according to the laws of the State of Missouri. This document constitutes the full understanding of the parties, and no terms, conditions, understanding on agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

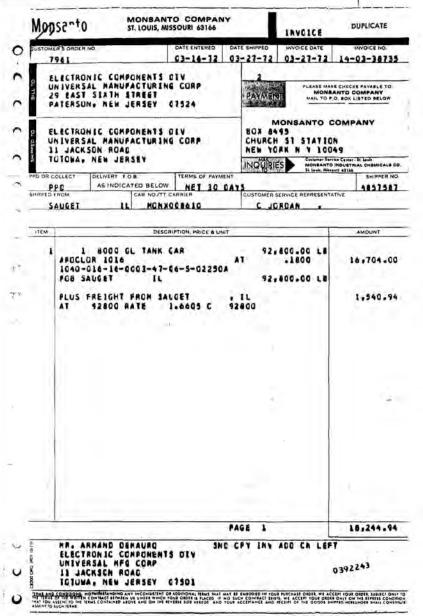
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**EXHIBIT D** 

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Filed - St Louis County - January 19, 2018 - 04:37 PM



Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1181

- TERMS AND CONDITIONS

  1. FORCE MAJEURE

  Deliveries may be suspended by either party in case of Act of God, war, rials, fire, explosion, flood, strike, beliving impriction, metability to obtain facel, power, raw materials, labor, containers, or transportation facilities, accident, breaking the administry of apparents, auctional defense requirements, or any couse beyond the control of such party, preventing the manufacture; alignment, acceptance, or communition of a shapment of the goods or of a material upon which the manufacture of the production of the product of the goods, is dependent if, bureaute of any soch circumstance. Soller is unable to supply the total deman facilities may cilculate as evaluate as evaluate as a supply among itself and all of its customers, including those not under contract, in an equilability manufacture.

  Such sections as supply the contract shall be conveiled without flability, but the contract shall otherwise remain small such as a supply and a supply among itself.
- 2 BUYER'S CREDIT. Sellor reserves the right, among other remedies, either to terminate this control or to suspend further difference under it in the event Buyer laits to pay for any one shipment when some becomes due. Should Buyer's financial resumminishing became unchalactory to Seller, cath payments or softstactory security may be required by Seller for future stutivents and fur goods theretofore delivered.
- 3. WEIGHTS AND CONTAINERS. In the case of bulk carlood, tank car, or tank truck shipments, shipper's weights shall govern. Where shipment requires use by Seller at carboys, drums, barrels or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be unade at the time the goods are paid for shall remain in Seller and a deposit in the original shall be used for any material other than that shapped therein and shall be returned within sary (60) days from date of shipment. On such containers being so returned in good conditions using the radies. a reland of the doposit will be made.
- 4. SHIPMENTS. The quantity shaped in any contract month may be limited by Seller to either; (a) the average of the mainthy quantities ordered by Buyer hereunder for the preceding contact months, or (b) the maximum quantity covered by this contract divided by the number of months in the contract period. Seller shall not be bound to tender delivery of any quantities for which Buyer has not given shipping instructions.
- S WARRANTY Unless otherwise provided herein, Seller warronts title and that all goods sold hereunder shall conform to Seller's standard specifications. Subject to the preceding sentence and except as otherwise expressly stated herein, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other substances. Salter shall not be liable for, and Buyer assumes responsibility for, all personal injury and properly damage resulting from the handling, possession or use of the goods by Buyer.
- damage resuming from the nanating, possession or use or the goods by duyer.

  6. LIMIT OF LIABILITY. All closure for alleged defective goods, shartege or other cause shall be deemed waived unless made in writing and received by Saller within filteen (15) days after Buyer learns of the alleged defect, but in no event later than writing and received by Saller within filteen (15) days after Buyer's exclusive remedy shall be for damages, subject, however, to stry (60) days after Buyer's region of the goods. Buyer's exclusive remedy shall be for damages, subject, however, to stry (60) days after Buyer's agreement that for any ond all losses or damages resulting from any cause whatever including alleged defective or damaged goods. Seller's lability shall in no event exceed the purchase price filtered, or at the election of Saller, the repair or cylinterment of such defective or damaged goods. In no event, shall Seller, be liable for incidental or consequential alamages. Transportation charges for the return of goods shall not be paid unless authorized in advance by Seller.
- 7 PATENTS. Seller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer promptly notify Seller of any stame or sout involving Buyer to which such intringement is altered, and if Seller is affect dues not warrant that Seller to control completely the dafense or compromise of any such allegation of infringement. Selfer does not warrant that the use of any goods sold hereunder, at articles made therefrom, either alone or in conjunction with other materials, will not distingue a potent. ofringe a patent
- B FREIGHT TAXES. Any increase in freight rates poid by Sellar an shipments covered by this contract and any fax or governmental sharge or increase in some hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the goods or all procuring materials used therein, and any tax now in effect or increase in some payable by the Seller because of the sale of the goods, such as Soles Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may, at Seller's options be added to the price herein specified.
- 4, LOSS IN TRANSIT. In case of breakage or loss in transit, Buyer shall have notation of same made on expense hill before
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for
  - a product to be made up specially for Buyer:

    1) A delivery of not less than 90% of the order will be considered a complete fulfillment of the order

    1) A cose of an aver-run, Seller may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds:
- 11 FAIR LABOR STANDARDS ACT. The moterial covered hereunder is warranted to have been produced in campliance with the requirements of the Foir Lobor Standards Act of 1938, and with oil amendments thereto.
- 12 MISCELLANEOUS. This control is to be construed occording to the laws of the State of Missouri. This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreement purporting to migdly or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

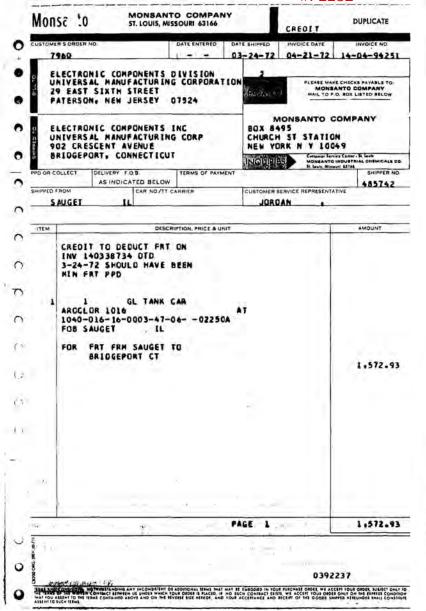
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**EXHIBIT D** 

Page: 114 of 268 PageID

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St Louis County - January 19, 2018 - 04:37 PM



Doc. #: 1-7 Case: 4:23-cv-00204-HEA Filed: 02/20/23 #: 1183

## TERMS AND CONDITIONS

- FORCE MAJETIEF Deliveries may be auspiesed by either porty in case of Act of God, war, rists, first, evidence, they have been impurition, inability to obtain fuel, power, raw materials, labor, containers, or transportation facilities, accident, to enlarge at muchinary or apparents, notional defense requirements, or any cause beyond the control of such party, preventing the manufacture, shipment, acceptance, or consumption of a shipment of the goods or of a material youn which the manufacture of the goods is dependent. II, because of any such circumstance, Seller is unable to supply the total demand for the goods. Soften many allocate in evaluable supply among itself and all of its customers, including those not under contract, in equalitie nature. Such deliveries so suspended shall be concolled, without liability, but the contract shall otherwise remain smallested.
- 2 BUYER'S CREDIT. Seller reserves the right, among other remedies, either to terminate this contract or to suspend further theliverius under it in the event Buyer fails to pay for any one shipment when some becomes due. Should Buyer's Innovical responsibility become unsatisfactory to Seller, cosh payments or satisfactory security may be required by Seller for lurare active ries and for gnods increated delivered.
- 3 WEIGHTS AND CONTAINERS. In the case of bulk carlood, tank car, or look truck shipments, shipper's weights shall govern Where dripment requires use by Seller of carboys, drums, barrels or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be made at the time the goods are peat for Such container must be kept in good condition and may not be used for any moterful allow than that dripment therein and must be ceturined within study (60) days from date of shipment. On such containers being so returned in good (andition, a refund of the deposit will be made
- 4 SHIPMENIS. The quantity shipped in any contract month may be limited by Seller to either: (a) the average of the man glandilles ordered by Buyer hereunder for the preceding control months, or (b) the maximum quantity covered by this contract divided by the number of months in the control period. Seller shall not be bound to lender delivery of any quantities for which Buyer has not given shipping instructions.
- 5 WARRANIY. Unless otherwise provided herein, Seller warrants title and that all goods sold hereunder shall conform to Seller's standard specifications. Subject to the preceding sentence and except as otherwise expressly stated herein, SELLER MAKES NO REPRESENTATION OR WARRANIY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANIABILIY, FINNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether was allose or in combination will utilizer substances. Seller shall not be liable for and Buyer assumes responsibility for, all personal injury and property disrege resulting from the handling, possession or use of the goods by Buyer.
- 6. INAT OF HABILITY. All claims for alleged defective goods, shortage or other cause shall be deemed waved unless maile as writing and received by Seller within lifteen (15) days after Buyer learns of the alleged defect, but in no event later than sure (60) days after Buyer's except of the goods. Buyer's exclusive remedy, shall be for domagaes, subject, however, to Buyer's agreement had no only and all lastes or damages resulting from any cause whatsaever including alleged defertive or damaged goods. Seller's liability shall in no event exceed the purchase price thereal, or at the efection of Seller, the rapms or replacement of such defective or damaged goods. In no event shall Seller be liabile for incidental or consequential damages. Transportation charges for the return of goods shall not be paid unless authorized in advance by Seller.
- 7. PATENTS Shiller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer occarding in Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer promptly notify. Sailer of any claim or sort involving Buyer in which such infringement is alleged, and if Seller is affected, that Buyer purmit. Sailer to control completely the defense or compromise of any such allegation of infringement. Seller does not warrant that the use of any goods sold hereunder, or articles made therefrom, either alone or in conjunction with other materials, will not infringe a patent.
- B FREIGHT TAXES Any increase in freight rates poid by Seller an shipments covered by this contract and any tax or govern-mental ringing or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling, or deflivering the goods or of procuring materials used therein, and any los now in effect or increase in same payable by the Sellion literature of the solle of the goods, such as Soles Tax, Use Tax, Retailer's Occupational Tax, Grass Receipts Tax, may, int Sellier's option, be added to the price herein specified.
- 9 LOSS IN TRANSIT. In case of breakage or loss in transit, Buyer shall have notation of same made an expense bill before
- 10 PLASTIC MATERIALS. Because of the conditions involved in the monufacture of plastic materials, where an order calls for

  - 11. FAIR LABOR STANDARDS ACT. The majerial covered hereunder is warranted to have been produced in compliance with the requirements at the Fair Labor Standards Act of 1938, and with all amendments thereto.
  - 17. MISCELLANEOUS. This controot is to be construed according to the lows of the State of Missouri. This document constitutes the full understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

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**EXHIBIT D** 

Page: 116 of 268 PageID Filed - St Louis County - January 19, 2018 - 04:37 PM



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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

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### TERMS AND CONDITIONS

- I FORCE MAIEURE. Deliveries may be suspended by either party in case of Act of God, war, riots, lira, explosion, flood, strike, lectout, injunction, malnify to obtain fuel, power, raw materials, labor, containers, or transportation facilities, accident, breakage of mathematy or apparatus, national delease requirements, or any cause beyond the control of such party, preventing the manulacture, shipment, acceptance, or consumption of a shipment of the goods or of a material upon which the manulacture of the goods is dependent. If, because of any such circumstance, Seller is unable to supply she total demand for the goods. Soiler supy officers in a ovariable supply among itself and all of its customers, including those not under control, in an imputable manuer. Such deliveries so suspended shall be concelled without liability, but the contract shall otherwise remain mallisted.
- 2. BLYFR'S CREDIT. Seller reserves the right, among other remedies, either to (erminate this contract or to suspend further dollverings under it in the event Buyer fails to pay for any one shipment when some becomes due. Should Buyer's financial impainshiftly hocome unsatisfactory to Seller, cosh payments or satisfactory security may be required by Seller for future deliveries and for goods theretofore delivered.
- 3 WEIGHTS AND CONTAINERS. In the case of bulk cortand, tank car, or tank truck thipments, shipper's weights shall govern Where shipment requires use by Seller of corboys, drums, barrels or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be made at the time the goods are paid for, South containers must be kept in good condition and may not be used for any majerial other than that shipped therein and amount to creturned with stay (50) days from date of shipment. On such containers being so returned in good condition in reland of the deposit will be made.
- a SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to either; (a) the average of the manifely quantities ordered by Buyer hereunder for the preceding contract months, or (b) the maximum quantity covered by this contract divided by the number of months in the contract period. Seller shall not be bound to tender delivery of any quantities. lities for which Buyer has not given shipping instructions.
- J WARRANTY Unless otherwise provided herein, Seller warrons title and that all goods sold hereunder shall contains in Seller's slandard specifications. Subject to the preceding sentence and except as otherwise expressly stated herein, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLED, AS TO MECHANIBELITY. FILINESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in continuation with other substances. Seller shall not be liable for, and Buyar assumes responsibility for, all personal injury and projectly dumpter resulting from the handling, passession or use of the goods by Buyer.
- delining revising from the nanoung, possession or use of the goods by duyer.

  6 PART OF TABILITY All claims for alleged defective goods, shortage or other cause shall be deemed waived unless male to writing and received by Selium within lithern (15) days after Buyer learns of the alleged defect, but in no event later man only 160 days after Buyer's receipt of the goods. Buyer's exclusive, remedy shall be for damages, subject, however, in those a approximate that for any and all lesses or damages resulting from any cause whatsoever including alleged defective a throughout goods. Shall in the event exceed the purchase price thereof, or at the election of Seller, the requirement of the production of the election of Seller, the requirement of the production of the election of Seller, the requirement of the production of the election of Seller, the requirement of the production of the election of Seller, the requirement of the production of the election of the election of Seller. The requirement of the election
- / PATENTS Suffer warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer pranipilly notify Scient of any claim or solt involving Buyer in which such infringement is alteged, and if Seller is affected, that Buyer permit soller and a name of a name of the patent of the seller designation of infringement. Seller does not variant that the use of any goods sold herounder, or articles made therefrom, either along as in conjunction with other materials, with and autonomous crafted.
- R FREIGHT TAXES. Any increase in treight rates paid by Seller on shipments covered by this controct and any tax or govern, account sharpe or increase in some hereafter becoming effective increasing the cost to Seller of producting, selling, or deduced by the goods or of producing instances used therein, and any tax now in effect or increase in some psychiat by the Seller because at the sole of the goods, such as Soles Tax, Use Tax. Retailer's Occupational Tax, Gross Receipts Tax, may, or Seller's eptime, be added to the price herein specified.
- 7 1989 IN TRANSIT. In case of breakage or loss in transit, Buyer shall have notation of Lama made on expense bill before puzua freight
- 17 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for

  - Alter Nation (According to Buyer:

    414 A delivery of not less than 90% of the order will be considered a complete fulfillment of the order.

    41 A delivery of not less than 90% of the order will be considered a complete fulfillment of the order.

    41 In case of an over (un, Seller may deliver and Buyer will accept any such excess up to 10% of this order, but not mure than 1,000 pounds.
- 11 FAIR LARDS STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments filtered.
- 17 MISCELLANEOUS. This control is to be construed occording to the laws of the State of Missouri. This document constitutes the half understanding of the parties, and no ferms, conditions, understanding on agreement purporting to modify or vary the turns of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

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**EXHIBIT D** 

Page: 118 of 268 PageID

Filed - St Louis County - January 19, 2018 - 04:37 PM



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Page: 119 of 268 PageID ically Filed - St Louis County - January 19, 2018 - 04:37 PM

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  BUYER'S CREDIT. Solice reserves the right, among other remedies, either to terminate this forther discerties under due to the event Buyer fails to pay for any one despiration when same be returned to the expension of the expensio

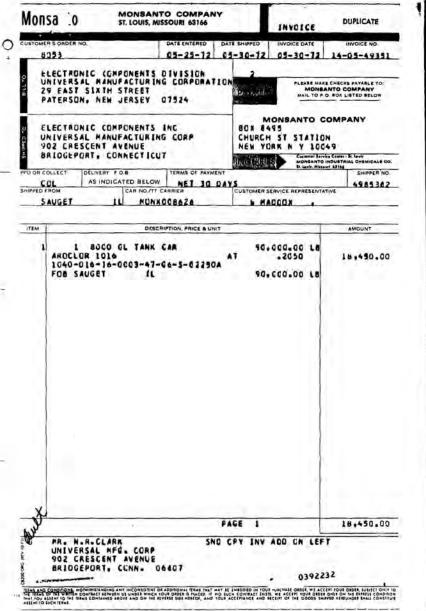
- against are paid for Such containers must be kept in good condition, must not be used for any material of high depaid within axis, (60) days from date of shipment. On such container to receive in good condition, a refund of the depaid will be made in a contract monitor and the container to the production of the depaid of the depaid will be made in a contract monitor. It is the maintain guarant shipped in any contract monitor monitor, as (6) the maintain guarant divided by the number of monitor in the contract promise, as (6) the maximum out you such monitor divided by the number of monitor in the contract period. Selection is an including a guarant monitor without flavor has not given shipping matriciations.

  5. LIMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise provided experients the and that all goods sold hereunder shall conform to Selet's standard specifications. Subject 18ARTY of ANY NIND, EXPRESS OR MAY, IED, AS TO MERCHANT ABILITY, FINNESS FOR PATICULA OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other systems used in goods for any gerhape, defects or shortage. At claims, including for alloged demand en willing and received by Selet within sixty (60) days after Buyer's recent of the good's civil by any after receive to each shipment of goods sold her and evanuant such good in camp gerhape, defects or shortage. At claims, including for alloged demand made in writing and received by Selet within sixty (60) days after Buyer's recent of the good's civil by any defection of the facts given recent of the facts given recent of the facts given recent of the facts given recent of the facts given recent of the facts given recent of the good's civil any defection of the facts given recent of the facts given recent of the good of which the facts given in an advantage of the facts given to give notice of any of the facts given recent of the good of which the product of the facts given to give notice of any of the facts given to give notice of an
- FREIGHT-TAXES, any increase in freight raiss paid by Seller on shipments covered by the presentational charge or increase in same hereafter becoming effective increasing the cost to S. I, or dishipment the preside or in procuring materials used therein, and any tax now in effect or inc. by the Seller harbasis of the sale of the goods, such as Sales Tax. Use Tax. Retailer's Occuping to the price herein specified.
- 10 FAIR LABOR STANDARDS ACT. The meterial covered hereunder is warranted to to compliance with the requirements of the Fair Labor Standards Act of 1938, and with all at
- In comparison with the requirements of the Fair Labor Standards Act of 1930, and with an alternative of the Constituted in accordance with the laws of the State of Missouri, This contract constitutes the full of the parties, and a complete and exclusive statement of the terms of their agreement, No conditionally a givennent purporting to modify or very. The terms of their agreement, No conditionally a standard or agreement purporting to modify or very. The conditions shall be effected by the amount or postplaced of purchase order or shaping instruction forms containing terms or condition with or in addition to those set fortil herein. No waiver by either Saller or Buyer with respect to a singular or of any right or remedy, and no course of dealing, shall be deemed to constitute a continual versions of the property of the previous of the property of the province of the property of the province of t

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Page: 120 of 268 PageID



Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

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# THE TRANSPORT OF THE PROPERTY

- 1: FORCE MAJEURE: Deliveries may be suspended by either party in tase of Act of God, war, rials, live, explosion, flood, strike, PENCE MARLINE: Deliveries may be suspended by either party in take of Act of God, war, riots, line, explosion, flood, strike, britant, injunction, including to obtain fuel, power, row materials, labor, continients, or transportation facilities, accident, brankage of annihilary or injunction, national delense requirements, or any cause beyond the control of party, preventing the manufacture, stigment, acceptance, or consumption of a stigment of the goods or of a material upon which the manufacture of the goods of the goo
- REVER'S CREDIT. Sulles reserves the right, among other remodes, either to terminate this contract at to suspend further before right until it in the event Buyer Inits to pay for any one stipment when some becames due. Should Buyer's linearial amountainforther to Seller, can payments or satisfactory security may be required by Seller for Julius delivered.
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- I SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to withor: (a) the average of the monthly pointifies undered by Byzer hereunder, for the proceding contract months, or (b) the maximum quantity severed by the contact dividual by the maximum quantity severed any quantities should not be bound to tender delivery of any quantities for which flagure are and given stopping instructions.
- 5 WARRATUV Holoss Thorwise provided herbin. Soller warrants title and that all goods sold hereunder shall conform to WARRATHY Mobiles Therwise provided herein Sellics variants infin and that all glouds sold hereinder shall conform to Shiler's shadded worth information. Soluted to the moveding sentence and except as alloweste expessivalized to herein, SELER MARKS FOR BY REPENTATION OR WARRANTY OF ANY KIND, EXPRESS FOR IMPLIED, AS JO MERCHANTABILITY, FILNESS THE PARTICULAR OF PROSE, OR ANY OTHER MATER WITH RESPECT TO THE GOODS, whether used clone or in combination and return substances. Soliter shall not be helde for, and Boyer or saumes responsibility for, all personal injury and property through the standard of the heading, possession or see of the goods by Boyer.
- "DATE OF WARRINY All claims for alleged delective goods, shartage or other cause shall be deemed waived unless made in actions = 3 ms. in 2 by Super waiting alleged was after Buyer terms of the alleged defect, but in no event later than out, and assess the super sections of the alleged defect, but in no event later than all, and assess and super sections of small state of the goods. Buyer's actionive remedy shall be for demages, subject, however, for the section of the action of the action of the action of the action of the section of the section of the remedy developed defective than and as a district solidity shall as me and occard the customs price thereof, or after the election of Soller; the replace are all the first of the remedy action of the remedy of the section of the section of the remedy developed the control of the section of the remedy action of the section of goods of a section of the remedy and action of the section of goods of a section of the section of the dead of the section of goods of the section of the
- PATES TO THE CONTROL WHITE MAY pools sold minimant tip as control, artispt as are made specifically for Buyer excerding to the production, and materiage any valual U.S. patent. This controlly a piece upon condition that Buyer promptly notified a may during sold according Buyer in which sold introllegment is uniceed, and if Softer is affected, that Buyer permit find the invarial completely the deleves or comprense of may such allegat and indifferences the day such and any goods sold hereworder. Or articles made meretrain, after at me an intermediate with other materials, will not allegate them.
- MIGHT TAXES. Any increase in freight rates cold by Seller on Firm with covered by this contract and any fax or govern must be sharpe or increase in tame accepted becoming effective increasing the rast to Suffer of producing, seeiling, are additionally the goods of all pain and materials seed filtering and my tax now in effect or increase insume myrable by the SCG to the area to increase insume myrable by the SCG to the area to increase insume myrable by the SCG to the area to increase insume myrable by the SCG to the area to increase insume myrable by the SCG to the area to increase insume myrable by the SCG to the area to the decidence of the good to the
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  If a many particles than 90% of the order will be considered a sanglety fulfillment of the order.

  To reserve that a many soller may deliver and Buyer will necess now such excess up to 10% of the order, but not
- FAIR LARGE STATISARDS ACT. The injected covered formular is watcuided to have been produced in complimed with the constitutionals all the Fire Latter Standards Act of 1938, and with all amongments dureto.
- 12 (1967) IA TEDDS. This common is to be construed according to the laws of the State of Missouri. This document constitues are common entired to the partner and no torm, partitions, inclinationally of agreement purporting to modify as very to a set of this decommon shall be an argued as the register mode in writing and signed by the party to be bound.

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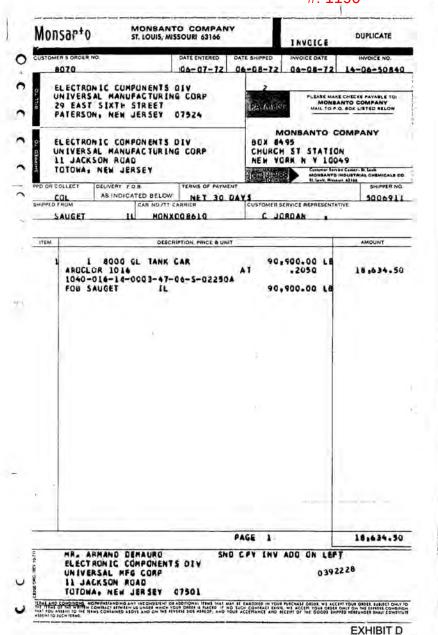
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Page: 122 of 268 PageID

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- St Louis County - January

2018 - 04:37 PM



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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

#### TERMS AND CONDITIONS

- I FORCE MAJEURE. Deliveries may be suspended by either party in case of Act of God, war, riots, fire, explosion, flood, strike, lockwist, myunthon, inability to obtain fuel, power, row materials, lobor, containers, or transportation lacilities, occident, breakage oil manifesture, shipment, acceptance, or consumption of a hipment of the goods or of a material upon which the manufacture at the granks is depositioned. It, because of any such circumstones, Seller's unable to supply the lotal demand for the goods, Sulter many allocate its available supply among itself and all of its sustainers, including those not under contract, in an equalistic manner. Such deliveries so suspended shall be conselled without liability, but the contract shall otherwise remain mander tost.
  - 2. BUYER'S CREDIT. Soller reserves the right, among other remedies, either to turminate this contract or to suspend further individues, under it in the exect Buyer fails to pay for any one shipment when some becomes due. Should Buyer's financial responsibility become usualislactory to Seller, each payments or satisfactory security may be required by Seller for future thinkveits and far goods the retolare delivered.
  - It WEIGHTS AND CONTAINERS in the case of bulk corload, tank car, or tank truck shipments, shippen's weights shall govern, Whore shipment requires use by Selter of carboys, drams, barrets or other returnable containers, title to such containers shall remain in Selter and a deposit in the amount required by Selter most be mode at the time the packs are paid for Such container must be kept in good condition and may not be used for any material other in that shippend therein and must be returned within city (60) days from date of shipment. On such containers being so returned in good condition, it returned in the largest will be made.
  - 4 SHIPAEAIS. His quantity shipped in any contract month may be limited by Seller to either: (a) the average of the ministry transitions material by Boyer hereunder for the preceding contract months, or (b) the maximum quantity covered by this material divided by the number of months in the contract period. Seller shall not be bound to tender delivery of any quantities for which Payer has not given shipping instructions.
  - WARRANTY. Unless otherwise provided herein, Seller watronts title and that all goods sold hereunder shall conform to Setter's standard succilications. Subject to the preceding sentence and except as otherwise expressly stated herein, SELLER MAKE'S NO. REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLED, AS TO MERCHANABILITY, FILLERS 17-18 PARTICULIAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used along or in combination with other advances. Seller shall not be hable for, and Buyer assumes responsibility for, all personal injury and property sharmon to the flow of the following passession or use of the goods by Buyer.
  - I that CV HABILITY All Charts for alleged detective goods, shorting or other cause shall be deemed waived unless math in withing and increased by Setter within titleen [15] days after Buyer learns of the alleged defect, but in no event later than are, or it dure man Buyer's recipil of the goods. Buyer's exclusive remedy shall be for damages, solvied, however, to they are a presented that for immy and all losses or damages resulting from any cause whatsoever including alleged defective. I must be an able to be shall shall an account except the purchase price thereof, or all the election of Seller, the report or explanations of such additional seller in advance of the proportion of the defective or damaged goods in no event shall. Seller, be tooked for incidental or consequential among a discount of the defective or damaged goods in no event shall. Seller be liable for incidental or consequential among a discount of the proportion of the defective or damaged goods that no event shall seller be liable for incidental or consequential among a discount of the proportion of the prop
    - EXECUTE. Soling warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer and Exercising Soling that Buyer according to Buyer and Soling So
  - In EXPTIGIAT TAXES. Any inclusive in freight rates paid by Seller on shipments covered by this control and any lax or govern award 16-10 for increasing some hereafter becoming affective increasing the soil to Seller of producing, selling, or this entire the most of the producing in the selling of the sell - - 3 of n. n. be midell to the price herein specified.
  - SSC-12 TRANSIT in case of areasage or loss in transit. Buyor shall have notation of some mode on expense bill helpro

     SSC-12 TRANSIT
  - 15 0 ASTE MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for

    - p. 25.5. ANT MATE . Becours of the conditions invaried to the translationary at the product of product of the order, in the condition product of the order, but he trained an exercise, Selfer may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds.
- FAIR LARDR STANDARDS ACT. The material covered herounder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 17 MISCELLANEOUS. This contract is to be construed occording to the laws of the State of Missouri. This document constitutes The fall understanding of the parties, and no terms, conditions, understanding or agreement purporting to modify ar vary thin times of this faculty of the binding unless hereafter made in writing and signed by the party to be bound.

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Page: 124 of 268 PageID Filed St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Filed: 02/20/23 Doc. #: 1-7 #: 1192 MONSANTO COMPANY Monsar' DUPLICATE ST LOUIS, MISSOURI 63166 INVOICE 0 06-23-12 96-26-72 06-26-72 14-06-53632 8090 ELECTRONIC COMPONENTS DIVISION
UNIVERSAL MANUFACTURING CORPORATION
29 EAST SIXTH STREET
PATERSON, NEW JERSEY C7924 0 PLEASE MAKE CHECKS PAYABLE TO: MONBANTO COMPANY MAIL TO P.O. BOX LISTED BELOW MONSANTO COMPANY BOX 8495 CHURCH ST STATION NEW YORK N Y 10049 ELECTRONIC COMPONENTS INC UNIVERSAL MANUFACTURING CORP 902 CRESCENT AVENUE BRIDGEPORT, CONNECTICUT NEN TURN IN CONTINUE Series Center - E bath
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Page: 125 of 268 PageID

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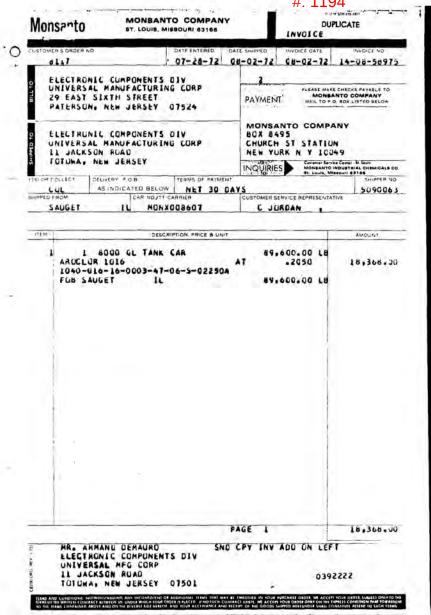
- 11 MISCELLANEOUS. The validity, intercellation and performance of this contract shall be addressibilitized in artist dance with the laws of the State of Missouri. This contract constitutes the full usual that the same account of the state of Missouri. This contract constitutes the full usual the same states, and a complete and exclusive statement of the terms of their agreement. No condition shouldness or agreement appropring to modify or vary the terms of this contract shall be binding unless should be appropriated in proceedings to the same states of the states of the same s

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Page: 126 of 268 PageID



Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1195

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- 17 OF ANY KIND EXPRESS OF IMPOSED, AS 10 MEMORIAN HARDS ANY VOITER MAY THE MOTH RESPECT TO THE GOODS, whether used alone or in LIMITATION OF LIBRILTY. Whiten there (30) days after receipt of each shipen reasons with pipose for any damper, defects of shortege All claims, included or always and the pipose for any other cause whatsover illudective performance or any other cause whatsover illudective performance or any other cause whatsover illudective performance or account of the cause of the performance of the superior and the first water of the performance and reasonably discoverable within haid size (60) of a second performance and reasonably discoverable within haid size (60) of a second performance not reasonably discoverable within haid size (60) of a second performance not reasonably discoverable within haid size (60) of a second performance not reasonably discoverable within haid size (60) of a second performance not reasonably discoverable within haid size (60) of a second performance not reasonably discoverable within haid size (60) of the size of the performance of the siz

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- FAIR LABOR STANDARDS ACT. The malerial covered hereunder is warranted to have be
- MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed in accordance with the laws of the State of Missouri. This contract constitutes the full undersail this parties, and a complete and sectionize statement of the terms of their agreement. No conditions, undersail or surprise and sectionize statement of their agreement, no conditions, undersail or surprise and section of the surprise and section of the surprise and section of the surprise and section of the surprise and section of the surprise and section of the surprise and section of the surprise and section of the surprise and section of the surprise and section of surprise and section of surprise and section of surprise and section of surprise and section of surprise and section of constitute a continuing severe of their breaktive default or of any other right or remedy, unless such willier be expressed in writing segment.

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Page: 128 of 268 PageID

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1196

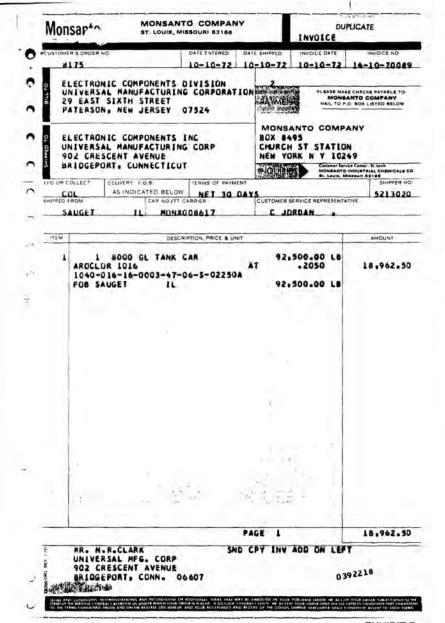


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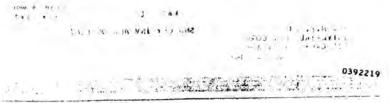
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- INVOINTATION OF LIABILITY When HESPECTTOTHE GOODS, whether used alone or in combestion.

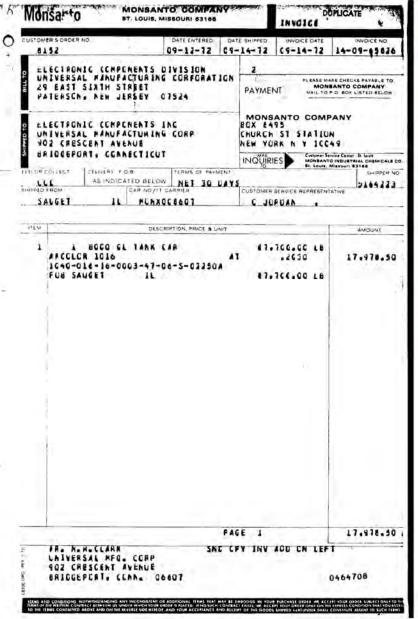
  LIMITATION OF LIABILITY When there is a construction of the construction of t
- RECORT-TAXES. Any increase in freight rates paid by Seller on shipments covered by incremental charge or increase in same herialter becoming effective increasing the cost to provide the presentation of the provided therein, and any tax now in affect or by the Selfer remainer of the safe of the goods, such as Sales Tax. Use Tax, Peraller's Control tax may us sale and safe to the goods, such as Sales Tax. Use Tax, Peraller's Control tax may us Selfers opening be added to the price before specified.
- LOSS IN TRANSIT: In case of breakage or loss in transa. Buyer shall have notation of same in tail butter proved freque.
- FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to he compliance with the requirements of the Fair Labor Standards Act of 1938, and with all at
- 11 MISCELLANEOUS. The validity, interpretation and performance of this contract shall english track to recordance with the laws of the State of Missouri. This contract constitutes the fund of the production of the contract constitutes the fund of the production of the complete and exclusive stratement of the terms of their agreement. No con-ductions or agreement purporting to modify or vary the terms of this contract constitutes the fundament of the contract of the contra



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Page: 130 of 268 PageID

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1198



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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

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1 FORCE MAJEURE. Deliveries may be suspended by either party in the event of Act of God, war, riot, frepresent, accident, flood, saborage, inability to obtain fuel, power, raw materials, labor, continenes or transportation
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  BUYER'S CREDIT. Safer reserves the right, among other remedies, where to permang the content or to sussur further determine under it is the event Bever falls to pay for any one shapment when share becomes due. Should
  give shared responsibility become unsentilated to 10 Soller, cash payments or satisfactory security may be required.

  Soller for future determines and for goods theretofore delivered.

  WEIGHTS AND CONTAINERS, in the case of pauls carboos, tank car, tank truck or barge studements explains shall govern unless scoved to be in error. Where shapment resources up to Soller of international containers,
  ands any bend fur. Such containers must be kept in good condition, must not be used for any material other than the
  appenditurem and must be instaured within saty (60) days from date of shapment. On solvic containers being so remonet any qued condition is returned or filter and as decorated.
- A SHIPMENTS. The quantity shaped in any contract month may be limited by Seller to gather, (a) the military fluorithms or derived by Buyer hereunder for the preceding centract muchis, or (b) the maximum ig, ms bornian division by the number of months in the contract period. Seller shall not be bound to the may substitute in the shaped of months in the contract period. Seller shall not be bound to the manufacture with it flyver has not given shapping instructions. 6 and unlines otherwise provided accurate total and quous solid hereunder shall conform to Seller's shapting specifications. Subject
- warunis tilir and tilir all goods sold herunder shall conform to Soller's standard specifications. Subject to the presen-ony windows and except in otherwise expressly provided brown. SELLER MAKES NO REPRESENTATION OR WAR HANTY OF ANY KIND. EXPRESS OR IMPLIED. AS TO MERCHANTABILITY, FITNESS FOR PARTICUL AR PURPOSE OIL NAY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or combination with other substances
- ANY OTHER MATTERWITH RESPECT TO THE GOODS, whenever used alone or combination with other subset.

  (i) LIMITATION DE LIMILITY Within thirty 130 days after recept of each shipment of goods suid hereunder. Before it is a state of the subset of
- PATENTS Select warrants that any quids sold pursuant to the contract, except as are made specific or confine to those superstanting and pursuant to the contract except as are made specific according to those superstantings, do not offering any valid U.S. patent. This warranty is given upon to take in the superstanting that it is obtained to the superstanting the superstanting the superstanting the superstanting the superstanting the superstanting the superstanting the superstanting the superstanting the superstanting to with the superstanting that the superstanting the superstanting to with the superstanting the superstanting to with the superstanting to superstanting the superstanting to superstanting the superstanting to with the superstanting to the superstanting to the superstanting to the superstanting to the superstanting to the superstanting to the superstanting to the superstanting the superstanting to the superstanting the superstanting the superstanting to the superstanting the superstanting to the superstanting
- H. FREIGHT-TAXES. Any interrose in freight rates paid by Seller annohumems covered by this contract and any fire adjustmental char as of increase in semin formatter becoming effective increasing the cost to Seller of producing and producing in the cost of the cost to Seller of producing materials used therein antiany tax forces in the increase in same pay-time by the Seller of the same in the increase in same pay-time by the Seller of the Seller of the increase in same pay-time by the Seller of the Se
- FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been pro-
- 11 MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed mall similarity accordance with the laws of the State of Missouri. This contract constitutes the full understand-mal similarity accordance with the laws of the State of Missouri. This contract constitutes the full understand-main the jurines, and a complete and exclusive statement of the terms of tries agreement. No conditions, under-standing or agreement purporang to modify or very the terms of tries agreement. No conditions, under-standing or agreement purporang to modify or very the terms of their agreement. No conditions, under-tained and septiation of quarternament of the bound, and no modification shall be effected by the acknowledge-ment of the supplement of quarternament of the shall be described by the acknowledge-th familiar of any right or remody, and no course of dealing, shall be deemed to constitute a continuing waiver of the state house or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

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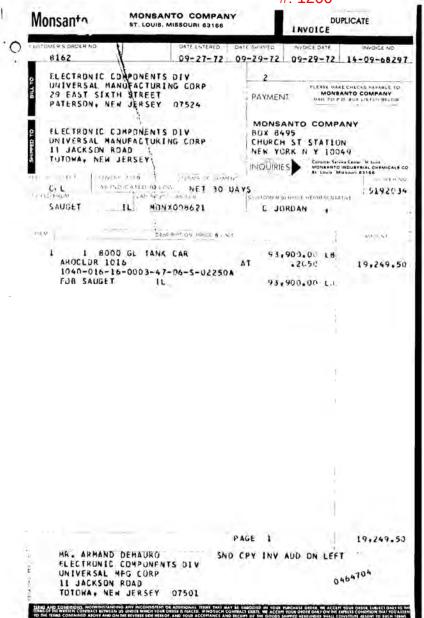
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Page: 132 of 268 PageID ically Filed - St Louis County - January 19, 2018 - 04:37 PM

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

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MONSANTO COMPANY

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1. FORCE MAJEURE. Deliveries may be suspended by either party in the ovent of ACL of God, war, rior, fire, incomin, adailant, flour, sabiotage, inability to obtain fuel, power, raw, materials, latice, containers or transportation adailant. Result sabiotage, and the sabiotage of action, breakings or failure of machinery or apparatus, national feature impromised for a machinery or apparatus, national feature impromised for a machinery or apparatus. As a supplementation of the properties of the p

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4. SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to either; let the everage of the units quantities or threat by Buyer berearder for the preceding printing months, or the the neutral months covered the activity contract period. Seller shall not be bound to remove on the contract period. Seller shall not be bound to remove delivery of a point has four various Buyer has not given shapping instructions.

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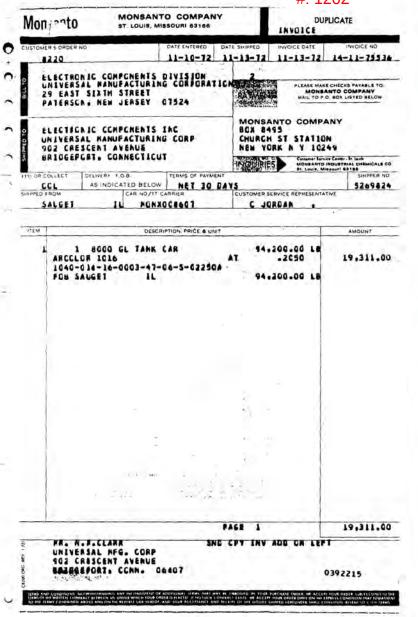
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Page: 134 of 268 PageID



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Page: 135 of 268 PageID

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- 5. LIMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise or warrants ritle and that all greats said hereunder shall conform to Selfer's standard specifications and sentent and except in enterwise agreestly provided herein. SELER MAKES NO REPRESS INANTY OF ANY DIVIDED AND EXPRESS OR INPUTED. AS TO MERCHANTABILITY, ETRESS FOR PAR (ILL ANY CHAP MATTER WITH RESPECT TO THE GOODS, whether used dione or incombination with Committee of the
- INNT OF ANY KIND EXPRESS OR IMPLEED, AS 10 MERLITHAN INSECTION, THREST ANY WIND EXPRESS OR IMPLEED, AS 10 MERLITHAN INSECTION OF LIABILITY. Within thirty (30) days after receipt of each shipment of goods sold never a UMITATION OF LIABILITY. Within thirty (30) days after receipt of each shipment of goods sold never and express such spinots such spinots for all peptide dehaged parties, shirt-tage, mail-tigence or any other cause whatspower ("officion performance"), shill be deemed we have a such as the first performance or any other cause whatspower ("officion performance"), shill be deemed we have a such as the first performance of the first period great to the oldern, whichever shall that occur, prompted-highway any officiative performance not reasonably discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable within said sixty (60) day period fincluding that discoverable and said sixty (60) day period fincluding that discoverable discoverable discoverable and said sixty (60) day period fincluding that d
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  solute about only warrant that he use of any goods sold hereunder, or anticles made their 
  miner than with utilizer hardranes, will not infrange a patent. Seller reserves, the right to termine 
  then Section 7 at any time with respect to any undelivered goods, it being agreed that in the attiver may without penalty, thereafter refuse acceptance of any undelivered goods.
- FREIGHT-TAXES. Any increase in freight rates paid by Seller on shipments cov-lance meetral interrup or increase in same hereafter becoming effective increasing it if in steller many than greats or of procuring materials used hirteen, and any tax rock in by the Seller because of the sale of the goods, such as Seller Sax, Use Tax, Rein 195. Tax day at Seller's soliton. De idded to the price hirmen specified.
- LOSS IN TRANSIT. In case of breakage or loss in transit. Buyer shall have
- THE FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to has complianted with the requirements of the Fair Labor Standards Act of 1938, and with all arms
- A MISCELLANEOUS. The validity, interpretation and performance of this contract shall be interpretation and performance of this contract shall be interpretated in instortance with the laws of the State of Mission. This contract constitutes the fung at the parties, and a complete and exclusive statement of the terms of their agreement. No constitution is appropriate to purporting to modify or vary the terms of this contract shall be binding untain an writing and signed by the party to be bound, and no modification shall be effected by the many an appropriate of purchase order or shipping instruction forms containing terms or condition with an in addition, to those set forth herein. No weiver by either Seller or Buyer with respect to definith or of any cight or remedy, and no course of dealing, shall be deemed to constitute a continuous after trivials in ideal and or of any other right, or remedy, unless such waiver be expressed in the time of the property to be bound.

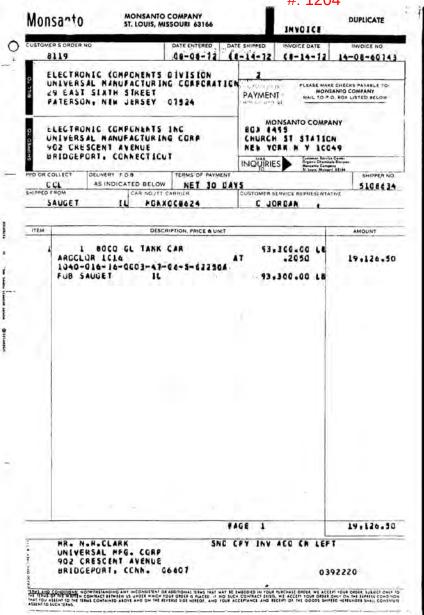
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Page: 136 of 268 PageID



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# A PORT WAY I WAY WALL THE THE TERMS AND CONDITIONS

- TERMS AND CONDITIONS

  1 FORCE MAJEURE. Deliveries may be suspended by either party in case of Act of God, war, riots, fire, explosion, flood, strike, lockout, injunction, inobility to obtain fuel, pawer, raw materials, labor, containers, or transportation facilities, accident, breakage of michinery or opportatus, national delense requirements, or any couse beyond the control of such party, preventing the manufacture, shipment, occeptonce, or consumption of a shipment of the goods or all a material upon which the manufacture of the goods is dependent. If, because of any such circumstance, Seller is unable to supply the total demand for the goods, Seller may allocate its available supply monay itself and all of its customers, including those not under contract, in an equilable manner. Such deliveries so suspended shall be concelled without liability, but the contract shall otherwise remain supplicates.
- 2. BLYER'S CREDIT. Seller reserves the right, among other remedies, either to terminate this contract or to suspend further delivering under it in the event Buyer fails to pay for any one shipment when some becomes due. Should Buyer's financial responsibility bacome unstallactory to Seller, cash payments or satisfactory security may be required by Seller for future deliveries and for goods therefoliar delivered.
- 3. WEIGHTS AND CONTAINERS, in the case of built carland, tank car, or lank truck shipments, shipper's weights shall govern. Where shipment requires use by Seller of carboys, drums, barrels or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be made at the lime the goods are paid for. Such-container must be kept in good condition and may not be used for any material other than that shipped therein and must be returned within sixty (60) days from date of shipment. On such containers being so returned in good condition, a refund of the deposit will be made:
- 4.5HIPMENTS The quantity shipped in any contract month may be limited by Setter to either: (a) the average of the monthly quantities ordered by Buyer hereunder for the preceding contract manths, or (b) the maximum quantity covered by this contract beliefed by the number of months in the contract period. Setter shall not be bound to tender delivery of any quantities for which Buyer has not given shipping instructions.
- S.WARRANIY. Unless atherwise provided herein, Seller worrants title and that all "goods sold hereunder shall conform to Selfer's Handard specifications. Subject to the preceding tenience and except as otherwise expressly stated herein, SELER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR "IMPLIED. AS TO MERCHANIABILITY, FINESS FOR PARTICULAR PURPOSE, OR ANY DIFFER MATTER WITH RESPECT TO -THE GOODS, whether used alone or in combination with other substances. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and properly damage resulting from the handling, passession or use of the goods by Buyer.
- 6. LIMIT OF LIABILITY. All claims for alleged defective goods, shartage or other cause shall be deemed waived unless made in writing and inceived by Saller within filteen (15) days after Buyer learns of the alleged defect, but in no event later than starty (60) days after Buyer's receipt of the goods. Buyer's exclusive remedy shall be for damages, subject, however, to Buyer's agreement that for any and all losses or damages resulting from any cause whatsoever including alleged defective or damaged goods, Seller's liability shall in no event exceed the purchase price thereot, or at the election of Saller, the repair or replacement of such defective or damaged goods. In no event shall Seller be liable for indefeatal or consequential damages. Transpartation charges for the return of goods shall not be gold unless authorized in advance by Seller.
- 7. PATENTS. Seller warrants that any goods sold pursuant to this contract, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any volid U.S. patent. This warranty is given upon condition that Buyer promptly notify Seller of any claim or curt involving Buyer in which such intringement is alleged, and if Seller is affected, that Buyer permit Seller to control completely the defense or comprants of any such allegation of infringement. Seller does not warrant that the use of any goods sold hereunder, or articles made therefrom, either alone or in conjunction with other materials, will not infringement and extense or comprant. infringe a palent.
- 8. FREIGHT TAXES. Any increase in freight rates paid by Seller on shipments covered by this contract and any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the goods or of producing materials used therein, and any tax now in effect or increase in some poyable by the Seller bedays of the sale of the goods, such as Salies Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may, at Seller's option, be added to the price herein specified.
- 9 LOSS IN TRANSIT. In case of breakage or loss in transit, Buyer shall have notation of same made on expense bill before
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an order calls for

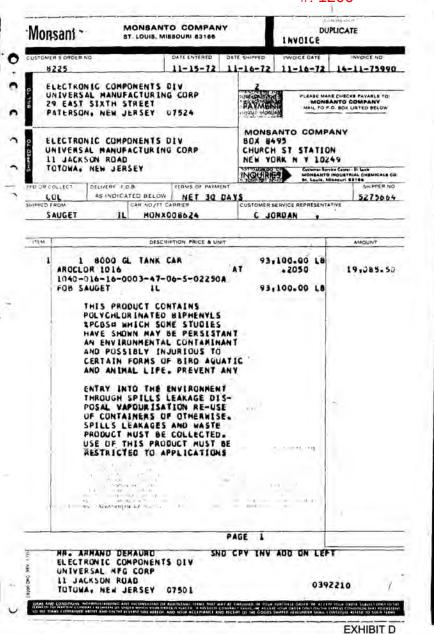
  - a product to be middle up specially for Buyer:

    (1) A delivery of not less than 90% of the order will be considered a complete fulfillment of the order.

    (2) In case of an over-trun, Seller may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds.
- 11. FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12 MISCELLANEOUS. This contract is to be construed occording to the lows of the State of Missouri. This document constitutes the full understanding of the parties, and no ferms, conditions, understanding or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the parity to be bound.

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Page: 138 of 268 PageID lically Filed - St Louis County - January 19, 2018 - 04:37 PM



Page: 139 of 268 PageID

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FORCE MAJEURE. Delivenes may be suspended by either party in the exposition in sections, flexing substitutes, governmental laws, regulations, orders or action, breakage or law materials, assume requirements or or whether or action, because or law the sum of the su

- were for future deliveries and for goods thereotore delivered.

  WEIGHTS AND CONTAINERS, in the cise of bulk carload, tank-car, tank truck or barge shipments with shall givern unless proved to be in error. Where shipment requires use by Seller of returnable or osuch containers shall remain in Seller and a deposit in an error of the following the shipment of the following shipment of the following shipment of the following shipment of the shipment of the shipment of the shipment of the deposit will be made.
- and in good condition, a refund of the deposit will be made.

  3. SHIPMENTS. The quantity shipped in any contract month may be limited by Sellier to either. (at the averance quantities ordered by Buyer nerveunder for the preceding contract months, or (b) the maximum quantities contract divided by the number of months in the contract period. Sellier stell not be bound to tender quantities for which Buyer has not given shipping instructions.

  5. LIMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise provided the same title and that all goods sold hereunder shall conform to Serve's standard secondardiscess services and except as otherwise expressions.

  5. SHOPPEN CONTRACTION OF THE PROVIDED CONTRACTION OF THE SHAPPEN SOLD PROVIDED CONTRACTION OF
- ANY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR!

  B. LIMITATION OF LIABILITY Within Intry 1201 days after recent of each shormen goods and here or mombanion with others is a full transmission of the product of t
- PATENTS. Shifer warrants that any goods soil pursuant to this contract, except as are made or according to Buyer's specifications, do not infringe any valid. U.S. patent. This warranty is given they or uniquity soilid yes expected to the soil of the soil o
- B FREIGHT-TAXES. Any increase in freight rates paid by Saller on shipments covered by this continuity in the property of the p
- LOSS IN TRANSIT. In case of braikage or loss in transit, Buyer shall have notation of same my
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  FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced
  planner with the requirements of the Fair Labor Standards Act of 1936, and with all amendments thereto.
- MISCELLANEOUS. The validity, interpretation and performance of this contract shall be and constructed in accordance with the laws of the State of Missouri. This contract constitutes the full unique of the parties of Missouri. This contract constitutes the full unique of the parties, and a complete and exclusive statement of the terms of their agreement. No condition standing or imprement purporting to modify or vary the terms of this contract shall be binding unless smade in writing and signed by the party to be bound, and no modification shall be binding unless smade in writing and signed by the party to be bound, and no modification shall be binding unless smade in writing and signed by the party to be bound, and no modification shall be bright to the party to be shall be deemed to constitute a continuing any other breach or default or of any other finding when the party to his bound.

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Doc. #: 1-7 Filed: 02/20/23 Case: 4:23-cv-00204-HEA #: 1208 MONSANTO COMPANY Monsanta DUPLICATE INVOICE 11-15-72 11-16-72 11-16-72 14-11-75991 4225 PLEASE MAKE CHECKS PAVABLE TO MONEANTO COMPANY MAIL TO PO BOX LISTED SELOW PAYMENT. MONSANTO COMPANY INQUIRIES Culture for the Cristor. In Lead MONBANTO INDUSTRIAL CHAMICALS CO St. Leule, Missouri 83'48 SHIPPER NO OWCOLLECT DELIVERY F.O.B. BELOW NET 30 DAYS AS INDICATED BELOW 5275664 SAUGET MUNX008624 C JORDAN TEM DESCRIPTION PRICE & UNIT WHICH CAN BE CONTROLLED SO THAT ENTRY INTO THE ENVIRUN-MENT DOES NOT OCCUR AND TO APPLICATIONS IN WHICH IT CAN-NOT COME INTO CONTACT WITH FOUD ANIMAL FEEDSTUFFS OR PHARMACEUTICALS.

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2. BUYER'S CREDIT. Softer reserves the right, among other remedue, either to terminate this contract or to sussuit futures, shourcas under it in the event Buyer falls to pay for any one shipment when same becomes due Shouldtour at more all requireshality become unsatrisfactory to Seller, could payment on satisfactory security may be required y slight for the difference and for goalest hereafting or delivered.

- WEIGHTS AND CONTAINERS in the case of bulk corriand, time one tents truck or burge shipments shipped shipments above of these showed to be made. Where shipment requires use by Select of combined containers, tells in the sub-containers shiplif raminin in Select and a deposit in the amount required by Select must be made at the time the rest-case plan for "Such containers" must be kept in good containor, must not be used for any maintainer than that shipping (trainers and must he returned within sorty (60) days from date of shipment. On such containers being so restauration growth distinctions and channel of the adoption will be made.
- 4 SHIPMENTS. The quantity shapped in any contract month may be limited by Seller to enter. (a) the everage of the contract which is a codered by Buyer hereunder for the preceding contract months, or (b) the maximum quantity covered him this plantant trivinded by the number of months in the contract period. Seller shall not be bound to lender delivery or any quantitives for which Buyer has not given shipping matricipins.
- anty countries for when theyer has not given emprong manuscrimes.

  5. LIMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise provided herein. Seller and that an actual and except sold hereinder shall conform to Seller is standard specifications. Subject to the proceed expression and except is on their wise expressly provided herein. SELLER MARES NO REPRESENTATION OR WARRANTAGELTY, FITNESS FOR PARTICULAR PURPOSE AND ACTUAL OF THE ACTUAL PROCESS OF MANUED, AS TO MERCHANTAGELTY, FITNESS FOR PARTICULAR PURPOSE OF MANUED, AS TO MERCHANTAGELTY, FITNESS FOR PARTICULAR PURPOSE OF MANUED, AS TO MERCHANTAGELTY, FITNESS FOR PARTICULAR PURPOSE OF MANUED, AS TO MERCHANTAGELTY, FITNESS FOR PARTICULAR PURPOSE OF MANUED, AS TO MERCHANTAGELTY, FITNESS FOR PARTICULAR PURPOSE.
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- it. FREIGHT-TAXES. Any increase in freight rates paid by Sieller un shipments covered by the contract and any commitment obering in increase in some hareafter economy effective increasing the cost to Salter of producing, advance in freight of the producing in the paid of the producing the paids or of producing materials used therein, and any list now in effect or increase in some paid or injuried to the producing the paid of the producing materials used therein, and any list now in effect or received in some paid or injuried and the producing the produc
- 1 LOSS IN TRANSIT In called iff preakage of loss in transat. Blovin shall have militation of same made on expense
- FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced as an engineering with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto
- MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and contract shall be governed and contract shall be governed and contract shall be governed and contract shall be governed and the state of Missouri. This contract constitutes the full understanding of this parties, and a complete and exclusive statement of the terms of this contract shall be brinding unless the extractionary of the state of the sta

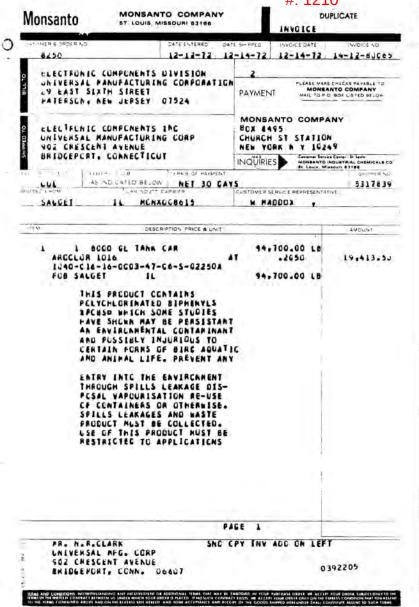
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# TERMS AND CONDITIONS

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- 1. FORCE MAJEURE: Deliveries may be surported by either party in the event of Act of God war rick in these and have another materials reliver, containers be transportung alteres governmental array can be supported by a surported by
- 2. BUYER SCREDIT. Sever reserves the light, among other remedies within to remedie this contract or to and further deliver on until the the event Buyer fails to give the any one shipment when serie becomes due. Shipment impersionly thereme, analyses shadout purposes for satisfactory security may be delivered. Select for future deliveries and for goods the state of delivered.
- 3 WEIGHTS AND CONTAINERS In the sake of bulk company carry types of barge abipments, shappar's regists shall gavern unless proved to be an error. Whose shapment requires use by Saler of repursable continents to a such containers shall read a no spoke, not be ensured required by Saler must end at the times the boost are paid for Such containers must be kept in good sundation must not be used for any material shall shall require in interest to the used for any material shall shall require must not be used for any material shall require must not be used for any material shall require must not be used for any material shall require must not be used for any material shall require must not be used for any material shall require must not be used for any material shall require must not be used.
- 4. SHIPMENTS: The countil's shipped in any contract month may be femiled by Solver to either at the own monthly countilies undered by Buyer berounder by the preceding contract months, or lot the maximum quality this countilies disabled the beautiful or the contract grand Seller shall not be bound to broker any quantifies by which Buyer has not given seigning instructions.
- 5. LIMITED WARRANTY Surport to the antistions of Section 6 and unless otherwise provided terror sectionaries and and that all unable sold therealise studies and an advantage specifications. Subject in the units and pulphone and bottom is discovered expressly provided them. SELER MARSES NO REPRESENTATION OR WAR OBJECT OF THE CONTROL OF THE SECTION OF THE PROPERTY OF THE SECTION OF THE SECTION OF THE PROPERTY OF THE SECTION
- PARTY OF ANY KIND EXPRESS OR INDUST, AS TO MERCHANTABLITY FINESS FOR PARTICULAR PURPOSE OR ANY CIVER MATTER WITH RESPECT TO THE GOODS, whether used along or recombination with other authorization of the Committee of the Committ
- B. FREIGHT-TAXES. Any increase in freight rates baid by Seller on shipments covered by this contract and any an experimental charge or increase in same himselfier becoming effective increasing the cost to Seller of producing, or deserbing the goods or all presuming insurarially soft increasing, and environmental charge or increase in same base or the Sollin because of the sale of the goods, such as Sales Tax, Use Tax Retailer's Occupational Tax Grish cogists Tax invex at Seller to option, be added to the price herein solected.
- 9 LOSS IN TRANSIT In case at breakage or loss is transit. Boyer shall have notation of same made tentore issuing freezing.
- 10 PLASTIC MATERIALS Because of the conditions involved in the manufacture of plastic materials, where an author Laths for a product to be made on specially for Bover.

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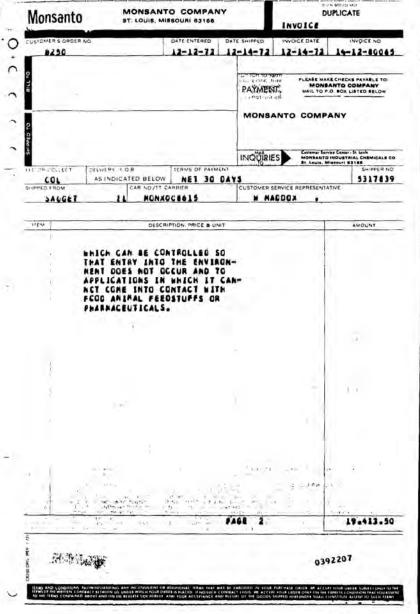
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warrented to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- an complaince with the requirements of the Fair Labor Standards Act of 1938, and with all amendments theretal.
  1.2 MISCELLANEOUS. The validity interpretation and performance of this contract shall be governed and construed in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and exclusive statement of the terms of their agreement to conditions, understanding or agreement purporting to modify or vary the terms of this contract shall be binding unless hereafter the properties and agreement of the contract shall be binding unless hereafter the properties of the contract of the contract shall be detected by the acknowledge-ment or accordance and a variance with or in addition to those set forth herein. No waiver by either Selfortanding terms or conditions at variance default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

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Page: 144 of 268 PageID

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#### TERMS AND CONDITIONS

- PORCE MAJEURE. Deliver as más-be suspended by either party in the event of Act of God, wer, riot, op on, accident, florad, setoringe, mability to obtain fuel, power, raw materials, labor, containers or transports on the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of any other event beyond the reasonable control of such party or in the world of labor, lackbot or injunction in Whither or not such labor avent is within the reasonable control of such party labor, which is reasonable control of such party labor, which is reasonable control of such party labor, which is reasonable control of such party labor, which is reasonable control of such party labor, which is manufacture of the goods is dependent. II, declase of any such sevent. Seller is unable to supply of productions are contact, on such basis as the training sould from ones, among later fland all of its outcomers, including these not under contract, on such basis as the determines in case. The properties suspended under this section shall be canceled without labelity, but this contract shall ones, among all party is put the scenarior contact.
- 3. WEIGHTS AND CONTAINERS, in the case of bulk carload, tank car, tank truck or Dirige ships shall govern unless proved to be in error. Where shipment requires use by Safer of arturn odds are paid for . Such containers must be kept in good condition, must not be used for any instant appeal thereo and must be returned within sixty (6D) days from date of shipment. On such containing must be the proposed within sixty (6D) days from date of shipment. On such containing the good condition, are found of the depote will be made.
- A SHIPMENTS. The quantity singped in any contract month may be limited by Seller to either (a) the average of the ontity quantities of the processing contract months, or (b) the maximum quantity covered, this contract develop by the number of months in the contract period. Seller shall not be bound to tender delivery of a quantities for which flavor has not given shipping instructions.

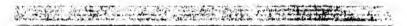
  5. LIMITED WARRANTY, Subject to the firmations of Section 5 and unless otherwise provided herein. Seller arrants altered and that all goods sold hereunder display conform to Seller's standard specifications. Subject to the proceeding sellence and except as otherwise provided herein. Seller MARSS NO REPRESINTATION OR WARRANTY OTHER MATTER WITH RESPECT TO THE GOODS, whither used alone of incommandation with other substances.
- OR ANY OTHER WATTER METERSECT TO THE GOODS, whether used slove or in combination what other subsiders with the processing of the processin
- The return of greats shall me be paid unless authorized in automatic by sensitive contract, except as are made specific recording to Buyer's specifications, ad not infringe any valid u.S. parent. This warranty is given upon or contract to the specific return of the specific
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- LOSS IN TRANSIT. In case of breakings or loss in transit. Buyer shall have
- 10 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an interest is a modulation to be made up specially for Buyer.

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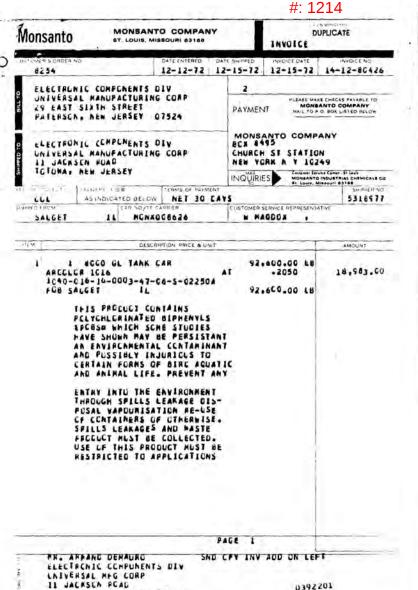
  21 th cycler of an own run, Seiter may deliver and Buyer will accept any such secess up to 10% of the order, but not more than 1,000 quotes.
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12. MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construed in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and exclusive statement of the terms of their agreement. No conditions, understanding or agreement appropriate to modify or vary the terms of this contract shall be binding unless hereafter and or agreement appropriate to modify or vary the terms of this contract shall be binding unless hereafter medium or acceptance of purchase order or shipping instruction forms containing terms or obtained a variance with or, in addition to those set forth herein. No waiver by either Saller or Buyer with respect to any breach or default for any right or remedy, and no dourse of dealing, shall be deemed to constitute a continuing waiver of any other breach or default for of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

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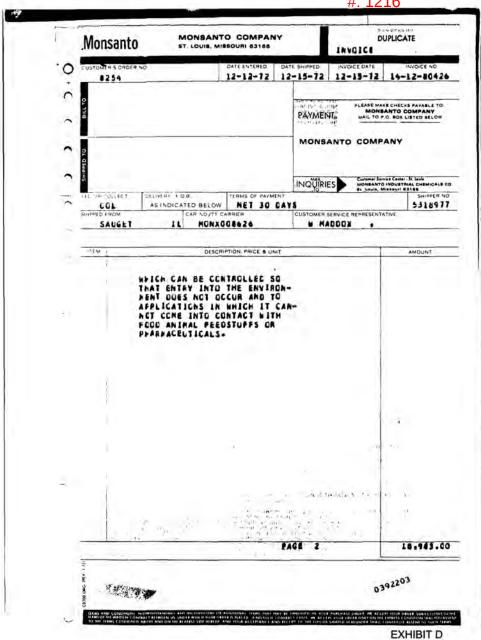
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- PLASTIC MATERIALS (for use of the Conditions involved in the manufacture of plastic materials, where an in the format of plastic materials where an in the property of
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced ampliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- The MISCELLAMEOUS. The validity, interpretation and performance of this centract shall be produced and constrained in accordance with the laws of the State of Miscellaments the following the produced and constrained macroproper with the laws of the State of Miscellament of the terms of their agreement. No conditions, understanding of the parties, and it complete and acclusive statement of the terms of their agreement. No conditions, understanding or agreement appropriate promoting to mostly or yet the terms of their agreement. No conditions, understanding or agreement appropriate of purposition of the party to the bound, and no modification shall be effected by the advancedage of the supposition of purpositions of purpositions of variance of shaping instruction forms containing terms or conditions at variance before the state of the contract of the conditions of the contract of the conditions and the state of the conditions are conditions at variance of the conditions are conditions as the conditions of the conditions are conditions as the conditions of the conditions of the conditions are conditions as t

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EXHIBIT D

Page: 148 of 268 PageID



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TERMS AND CONDITIONS

Fig. 1º FORCE MAJEURE. Deliveres milk bit suspended by feither party in the event of Act of God, war, not, the explication specialist. It have abbittage enabling to obtain fuel, power, new materials, labor, containers or transportation includes, governmental laws regulations, orders or action, breaking or failure of membery or apparatus, national perfense requirements or any other event beyond the reasonable control of such party), which event prevents the manufacture interments or consumption of a shipment of the goods or of a material upon which the manufacture of the goods or do pounded. It because of any such event, Seller is unaffered to supply the total demand for the goods. Seller may allocate as available supply of goods, without obligation to purchase similar goods from other surrichs, among stellar and all of its outstomers, including those not under contract to auch basis as it determines to be equalated.

- 3. WEIGHTS AND CONTAINERS, in the case of bulk carbad, tank car, tank truck or barge stepments, shoughts shall govern unless proved to be in arror. Where supment requires use by Solies of returnate controls are put of the carbad controls. The carbad controls of the carbad

- support therein and must be naturned within salty (60) days from date of shipment. On such containers being so instrumed in done positions in refund of the deposit will be made.

  4. SHIPMENTS. The shammy shipped in any contract moths have be limited by Seller to either (a) the average of the mothing bandwise or deposition of the preceding contract moths, or fall the manning purply covered by this starting day live number of interiors in the contract period. Seller shall not be bound to tender delivery of any quantities for which flaving has not given shipping instructions; (5).

  5. LIMITED WARRANTY. Subject to the immations of Section 6 and unless otherwise provided herein. Select rather than a sellect and the late of proceeding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore and except as otherwise expressly critical for the proceding summore of the summore of the summore of the summore of the summore of the summo
- 7. PATENTS. Selectivariants that any goods sold pursuant to this contract, except as are made specifically for flagor are conting to Buyer's specifications, do not infringe any valid U.S. patent. This workarmy is given upon conditions and control of the selection of the selecti
- 5. FREIGHT-TAXES. Any increase in freight rates baid by Seller on shipments covered by this contract a or governmental charge of increase in same hereafter becoming effective increasing the cost to Seller of principle in a same hereafter becoming effective increasing the process or of principle granterials used therein, and any tax notice in effect or increase in same by this Selter (sections for the sale of the gloods, such as Sales Tax, the Tax, Reference Sections for motions and additional to the principle herein specified.
- 9 LOSS IN TRANSIT. In case of breakage or loss in transit, Buyer shall have notation of same made on expense
- 10 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of pinktic materials, where an use date for a review to the made up specially for Buyer.

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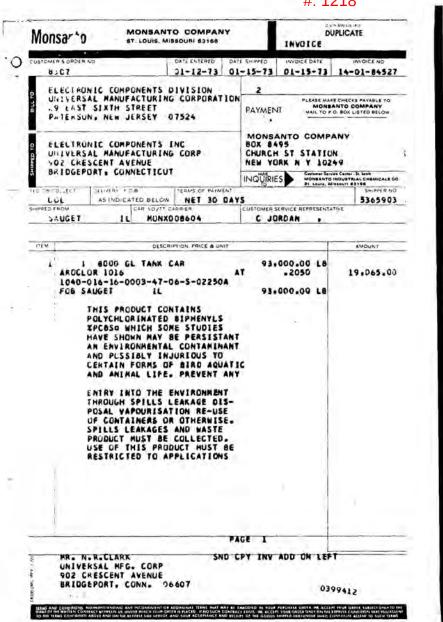
  If it is because of the order train. Solder may deliver and Buyer will accept any such excess up to 10% of the order, that the surface is the surface of the order.
- 11 FAIR LABOR STANDARDS ACT, The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12 MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construid in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and acculates statement of the terms of their agreement. No conditions, undermade in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgement or acceptance of purchase order or shipping instruction forms containing terms conditions at variance with or in addition to those set forth herein also wisiter by dither Soller or Buyer with respect to any breach as feeting the forth and in the conditions at variance with order of the set of the party to set of the set of the party to the party to be bound.

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**EXHIBIT D** 

Page: 150 of 268 PageID



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Page: 151 of 268 PageID

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### TERMS AND CONDITIONS

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- 2 BUYER'S CREDIT Seller reserves the right, among other runledes, either to terminate this contract or to sus not author deliver as under it in the event Buyer fails to pay for any one shipment when same becomes due. Should year is innated responsibility factorie undestitation to Seller, paid payments or satisfactory security may be required. Seller for future deliveries and for igoods theretotore delivered.
- as seems for future deriveries and for goods threstolder delivered.

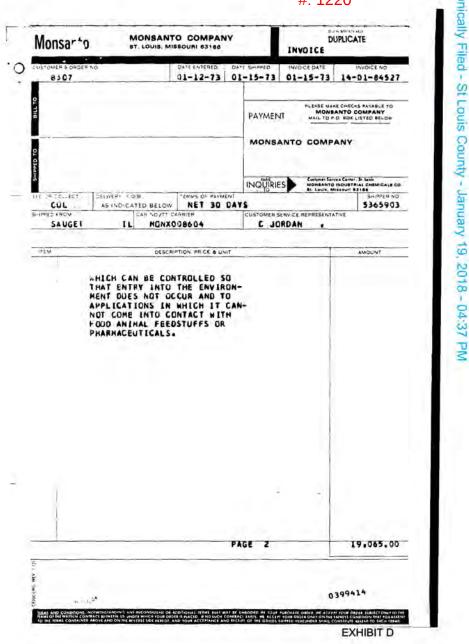
  WEIGHTS AND CONTAINERS, In the case of built carried, tank car, tank truck or barge shipments, shipped's weights shall govern unless proved to be in arras. Where shipment requires use by Selfer of returnable continents, weights shall govern unless proved to be in arras. Where shipment requires the bester not returnable continents are shipped to the Selfer into the Selfer in the
- 4. SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to either rigil the overage of the onthly quantities ordered by Buyer nereunder for the preceding Contract months, or lib the insurinum quantity coursed the contract when the contract of video of the higher or invariance in course green. Seller shall not be bound to lender delivery of y quantities for which Buyer has higher shall prive shall
- PARALY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE POR ANY CITE MATTER WITH RESPECT TO THE GOODS, whithey used alone or in combination with other substances. 3. LIMITATION OF LIABILITY Avinna trury. 30: gays after recept of each separation of goods sold hierarder. Buyer and learning such goods for alleged damaged or defective gends, shartage, negligence or any other cause whatsever indictive performance it, shall be deemed waved unless the properties of the facts springly and the sold of the facts springly and the sold of the facts springly received the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the facts springly received the sold of the sold of the facts springly received the sold of the sold of the facts springly received the sold of the sold of the facts springly received the sold of the sold of the facts springly received the sold of the
- 8 FREIGHT-TAXES, Any increase in freight rates just, by Spiler on Shigments covered by this contract and any tax or just immental study or members in same hereafter becoming inflective increasing the cost to Seler or practicing, and or wind uncertainty or processor of practicing materials because in same payments by the Seler bechange of the same of the grads, such as Seler fac, type Tax, Retainer's Occupational Tax. Or as Measurement or more affective or other benefits of the grades.
- 9 LOSS IN TRANSIT on some of breakage or lines in transit. Buyer shall have nutrated of saline mean or salines paging frough
- 9.5 PLASTIC MATERIALS Because of the conditions anywived logific manufacture(o) pysis, materials, where an election is the action on specially for Buyer and action of the condition of the co
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12. MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construid in accordance with five laws of the State of Missouri. This contract constitutes the full understanding of interpretation and performance of the parties, and a complete and acclusive statement of the terms of their agreement. No conditions, understanding or agreement purpose time to most or any the first production of the parties and the production of the parties of the parties of the parties and the parties of the

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EXHIBIT D

Page: 152 of 268 PageID



Page: 153 of 268 PageID

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8. LIMITATION OF LIABILITY Victims (May 150005), whether used as the suppress of goods and hereofor defective performance), shall be determed using the control of the good damaged on defective goals, what is understance, and which as the control of the good of

P. FREIGHT-TAXES. Any increase in freight rates paid by Seller on shipments covered by this contract and any in plan-frinkental charge at increase in some hereafter becoming effective increasing the cost to Select of producing. They, or optimizing the goods or of producing materials used therein and alvia kar now in effect or increase in same pay, or by 190 Soller because of the shall of the goods, such as Sales Tax, Use Tax, Retailer's Occupational Tax, Grosswight Tax, bright is backed to the rivele herein specified.

9 LOSS IN TRANSIT. In case of breakage or loss in transit. Buyer shall have notation of same

10 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where are limit cuts for a product to be made up specially for Buyer.

1. A develop of not sign streng 90% of the order will be considered a complete fulfillment of the order.

2. In special an over-run. Seller may deliver and Buyer will accept any such excess up to 10% of the order out not more than 1.000 pounds.

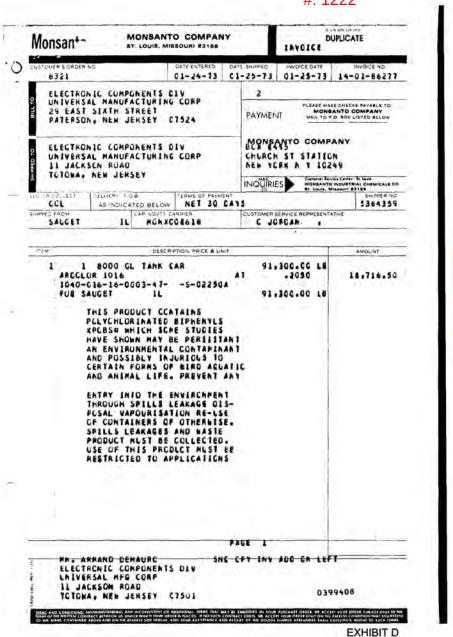
11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.

12. MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construed in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and acclusive statement of the terms of this rangement. No conditions, under any of the parties, and a complete and acclusive statement of the terms of this contract shall be binding unless hereafter made in writing and signod by the party to be board. He terms of this contract half be binding unless hereafter and in writing and signod by the party to be board in the party to be considered of purchase order or shapping instruction forms containing terms or continuing waiter or an addition to those set forth herein; No waiver by either Saller or Buyer with respect to any breach or large time or continuing waiver of any other breach or default or of any tight or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

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EXHIBIT D

Page: 154 of 268 PageID



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#### TERMS AND CONDITIONS

1. FORCE MAJEURE: Durishment him be selepended by either party in the event of Act of Graz with fruit free present and plant from a submaper materity to entire her averse materials, face containing or transportation class give ammentation, required and appropriate production of the programments are expected and activities and transportation of the programments are expected as a programment and the expected of the reasonable control of submapers or in the event of latter trackle, we contain the majerial provider may acceptance or donsumption of a shipment of the goods or of a material power expected in the manufacture of the goods are done and the goods of a material power of the manufacture of the goods are described as a provider and the goods. Since may allowed the available surply of units of the goods are manufacture of the goods are available surply of units of the goods are as a provider and and of the goods. Since may allowed the available surply of units of the goods are allowed to the customers including three informations are contract, and such basis as of contractions are contracted as a supported under this section shall be concerned without industry, but this contract shall generate.

- Buyens Challets as is section of other than section and the extrement without all the contract and other properties. Buyens CREDIT. Seller reserves the sight, among other reflected, within to terminate this contract in the overall busen has to pay the any one shipment when same becomes due should be seller for future deliveries and for global interestiction delivered.

  3. WEIGHTS AND CONTAINERS his the base of balk careaut farms as satisfactory operating the real-red is seller for future deliveres and for global interestiction delivered.

  3. WEIGHTS AND CONTAINERS his the base of balk careaut farms as satisfactory operating and provides the seller seller than balk of the pay the seller must be applied to the seller than the pay the seller must be seller and a deposit in the among red pay to Seller not reduce the red the among are paid for some intrainments must be kept in good dominion, must not be used for any interest order than enter of the among are paid for some intrainments must be kept in good dominion, must not be used for any interest order than enter of the containers and the creation of which is seller of the doubth of the bands of seller must be seller in a the average of the monthly quantities ordered by Buyer regulator for the preceding contract months, or by the maximum quantities are also because the which Buyer progrander for the preceding contract months, or by the maximum quantities of the day has in given as progrand maximum.

  5. LIMITED WARRANTY, Subject to the limitations of Selection 6 and unique otherwise provided meren. Selections in the authority of the progrand of the progrand for the preceding contract months, or by the maximum quantities of the progrand for the preceding contract months, or by the maximum duration of the contract the selection of

- RANTY OF ANY KIND EXPRESS OF IMPURED AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOS TO ANY CIND EXPRESS TO A PATTORE MATTER WITH RESPECT TO THE GOODS, whether used allow on an combination with one substance to LIMITATION OF LIABILITY Within thirty 30 days after review of each shapment of goods sold hereumore. Buy stall examine sould greatly sold any after blaims, including for ellegad managed or defects goods, shortage and sighting, including for ellegad managed or defects goods, shortage and sighting, including the legad control of the goods of within thirty allowed unless those in the sighting and sections of the sighting state of the goods of within thirty allowed unless those in the sighting and sections of the sighting a
- B FREIGHT-TAXES. Any increase in frequit rates paid to Select on Scholments covered by this contract and any tax or granteer in the select of the contract and any tax or granteer or the select of producing select or granteer or producing select or granteer o
- 10 PLASTIC MATERIALS Because of the conditions involved in the intendicture of public materials, where an origin rails for a product to so made up specially for Buyer.

  1. It deverage for itself many forms to the order will be considered a complete fulfillment of the order.

  2. In case of an over-run, Setter may deliver and Buyer will accept any such excess up to 10% of the order, such at more than 1,000 pointed.
- 11 FAIR LABOR STANDARDS ACT. The material covered heraunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- an compliance with the requirements of the Fair Later Standards Act of 1938, and with an amendments thereto.

  1.2. MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and constitued the accordance with the laws of the State of Missour. This contract constitutes the full understand-standing or agreement purporting to modify or very the terms of this contract shall be binding unless hereafter made in winning and signed by the party to be bound, and no modification shall be effected by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth hardis. No waiver by either Seller or Buyer with restor to any breach or default or of any right or remody, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other breach or default or of any other breach or default or of any other right or remody, unless such waiver be expressed in writing signed by the party to be bound.

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EXHIBIT D

Page: 156 of 268 PageID

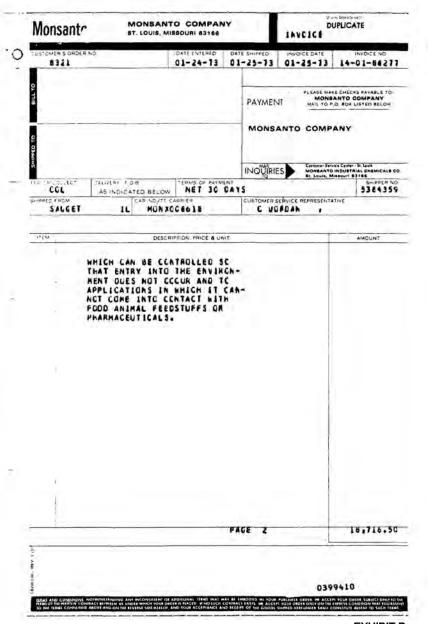


EXHIBIT D

Page: 157 of 268 PageID

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# TERMS AND CONDITIONS

2 BUYER'S CREDIT, Seller réservés the right, among other ramedies, either to terminate this contract or to sus-na further deliveries under it in the event Buyer fails to pay for any one shapment when same becomes due Bhoyld vers francally responsibility become unsenfactory to Seller, cash payments or satisfactory security may be required Seller for futural deliveries and for goods thereforce delivered.

- 3. WEIGHTS AND CONTAINERS. In the case of bulk carload, fank can tank truck or barge shipments, shipper's segints shall govern unless proved to be in error. Where shipment requires use by Seller of returnable containers shall govern unless proved to be in error. Where shipment requires by Seller not made at the time the hoods are paid for. Such containers must be kept in good condition, must not be used for any material origin than the hoods are paid for. Such containers must be kept in good condition, must not be used for any material origin than that hopped therein and must be returned within size, following the mode.
- ring in good condition, a retund of the deposit will be made.

  \* SHIPMENTS. The journality shaped in any contract month may be limited by Seller to either Tail the average of the promiting quantities ordered by Buyer hereunder for the preceding contract months, or toll the maximum quantity covered this cuntract ovided by the number of months in the contract period. Seller shall not be bound to lender delivery of yournalities for which gluver has not given shallow instructions.
- any quantities for which suver has got given shipping instructions.

  5. LIMITED WARRANTY. Subject to the initiations of Section 6 and unless otherwise provided herein, Selfenarrans tries and that all glouds self hereunder shall conform to Selfer's standard specifications. Subject for the proceeding senting and energy as otherwise expressly provided herein, SELLER MAKES NO REPRESENTATION OR WAR-HANTY OF ANY KIND, EXPRESS OR INPLIED. AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE. ANY KIND, EXPRESS OR INPLIED. AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE. ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used advice or in communition with other subsidiences.
- ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with other substances.

  6. LIMITATION DE LIBILITY Within minty. 301 days after receipt of each shomen to goods sold hereunder. Buyer an examine such goods for any ownage, defects or shortinge. All claims, including for alleged damaged or defective aleter in writing and received by Seller within says (501 days) after. Buyer's receipt of the goods or within thirty. 30 lists after the writing and received by Seller within says (501 days) after. Buyer's receipt of the goods or within thirty. 30 lists after the writing and received by Seller within says (501 days) after. Buyer's receipt of the goods or within thirty. 30 lists after the property of the same of the facts gardy use to the Germ-Any-factor's shall first occur, providing that discoverable only and claims and any shall be defended within said sixty (601 day period including that discoverable only and information and any). 801 days after by Seller within said sixty (601 days) after the same of the sam
- PATENTS belief warrants trust any gloods said aversum to this contract, except as are made specifically for according to Buyer's specificalities, do not influing any valid U.S. patent. This warranty is given upon condition belief body only selected and in the selected and in the selected trust belief to extend any other selected that Buyer permit Selected careful complicated the determinant of any such allogation of infringes. Serie duals not selected careful c
- B. FREIGHT-TAXES. Any increase in fleight falses paid by Setter (in shipments covered by this contract and any segmentmental charge or increase in same horselfier becoming affective increasing the cast to Setter of producing, any at your injury to the contract of producing materials bead thereon, and any tax now in effect or increase in sense in by it in the Setter frequent of the set of the goods such as Sales Tax. Use Tax. Retailer's Occupational Tax. Grass come "14", may at Soler's applicable dated for the price herein specified.
- 9 LOSS IN TRANSIT. In case of breitage or loss in transit. Buyer shall have notation of same made on expense
- 10 PLASTIC MATERIALS. Because at the conditions involved in the manufacture of plantic materials, where an other crisis file a product so the made up specially for Buyer.

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  22 In case of an layer run. Softer may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 punds.
- .11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto
- 12 MISCELLANEOUS. The validity, interpretation, and performance of this contract shall be poveried in do construct in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and exclusive statement of the terms of their agreement. No conditions, understanding of agreement supporting to modify or very the terms of their agreement. No conditions, understanding or agreement supporting to modify or very the terms of this contract shall be blinding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledge-ment or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to mose at forth herein. No waiver by either Seller or Buyer with respect to any breach or closely of any right or medy, and no course of dealing, shall be deemed to constitute a continuing waiver of including the constitute of constitute a continuing waiver of any light or constitute or continuing waiver of any light or constitute or continuing waiver of any light or continuing the continuing the continuing waiver of any light or continuing waiver of any light or continuing waiver of any light of continuing waiver of any light or continuing waiv

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EXHIBIT D

Page: 158 of 268 PageID



Page: 159 of 268 PageID

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1. FORCE MAJBURE: Deliveries may be suppended by either party in the event of Act of God, well-rick treexplosion, accident, flood, sabbitage, mathiny to obtain fuel, bower, faw materials, labor, containers or transportational
facilities, governmental laws, regulations, orders or accident, breakage or failure of machinery paparatus, hardwaited
defense requirements or any other event beyond the reasonable control of such party or in the event of lepor troubles
strike, lockout or injunction (Whether or not such labor, event is within the reasonable control of such party or in the event of lepor troubles
prevents the manufacture, shipment, acceptance or consumptioning a glispment of the goods or dirantegration to the manufacture of the goods is, dependent if, because of any such event. Saller is unable to supply the total demand
for the goods, Seller may allocate its available supply of goods, without obligation to purchase similar goods from other
sources, among itself and all of its outsomers, including those, not under confrict, on such base was in determines to be
equiliable. Deliveries suspended under this section shall be cancelled without liability, but this contract shall otherwise
female, unaffected.

- remain unaffected.

  2 BUYER & CREDIT. Seller reserves the right, among other termedus, either to terminate this contract or to pand further deliveress under it in the evant Buver falls to pay for any one shipment when same becomes oue St Buver is handled to be to Seller, cash payments or sensitivery security may be required by Seller for future deliveres and for goods therefore delivered.

  3 WEIGHTS AND CONTAINERS, in the case of built carload tank part, tank typis or beings shipments, shiply weights shall govern unless proved to be in error, where shipment requires the by Seller of returnable containing the seller of the seller of returnable containing the seller of the seller o
- 4 SHIPMENTS. The quantity shoped in any control month may be limited by Seller to either. (a) the average of the morthly quantities ordered by Buyer hereundill fair the breading contract months, or (b) the maximum quantity covered by this contract divided by the hermother than the contract period Seller shall not be bound to tender delivery of any quantities for which Buyer has pot given shipping instructions.

  5 LIMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise provided herein. Seller warrants tries and that air goods sold hereunder shall conform to Selter's standard specifications. Subject to the instructions of Section 6 and unless otherwise and except as otherwise appreash provided herein. SELLER MARES WE REPRESSE WE RE
- OR ANY OTHER MATTER WITH RESPECTTO THE GOODS, whether used alone or in combination with other substance.

  LIMITATION OF LIABILITY Within think (30) days after receipt of each shipment of goods sole hereunder. But shall examine such googs for any damage, defects or shortings all claims, including for willege damaged or defect made an writing and received by Seller within Airty (60) days after Boyer's receipt of grid goods for which having the same directive performance not reasonably discoverable within Sand sarry (60) day period finedding that discoverable within Sand sarry (60) day period finedding that discoverable within Sand sarry (60) day period finedding that discoverable within Sand sarry (60) day period finedding that discoverable within sand sarry (60) day period finedding that discoverable within sand sarry (60) day period finedding that discoverable of the goods of within thinky (20) days after the sarry directive sample of the goods of within thinky (20) days after the sarry directive sample of the goods of within thinky (20) days after the sarry directive sample of the goods of within thinky (20) days after the sarry directive sample of the goods of within thinky (20) days after the sarry directive sample of the goods of within thinky (20) days after the sample of the sample of the goods of within thinky (20) days after the sample of the goods of within thinky (20) days after the sample of the goods of withinky (20) days after the sample of sample and sample and sample and sample and sample and sample sample sample sample of sample and sample and sample days after the sample of sample and
- Treme return of goods shall not be paid unless authorized in advance by Selfer.

  PATENTS. Seller warrants that an goods soot pursuant to the contract, except as are made specifically to Bover according to Buyer's specifications, or not integing any valid U.S. patient. This warranty is given upon condition into Buyer premptly north Selfer of any clean or suit innouring Buyer in which such introgeness the sleep of any clean or suit innouring Buyer in which such introgeness sleeped and it Selfer in affected, that Buyer permit Selfer to control completely the defense for compromise of any such alleged and it Selfer must Selfer does not warrant that the use of any goods sold hereunder, or articles made thereon where along on the control of the materials, will not introge a patent. Selfer reserves the right to terminate Selfer so obligations under this Selfer in a submitted by the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of the selfer of producing and selfer on submetts of the selfer of producing and selfer on selfer of the selfer of producing and by unable to the selfer of producing and the selfer of t
- LOSS IN TRANSIT in case of pre-sage or loss in traces. Bover shall have negation of same to the hope to project frequent.
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an other calls for a product to hermade up specially for Boyer.

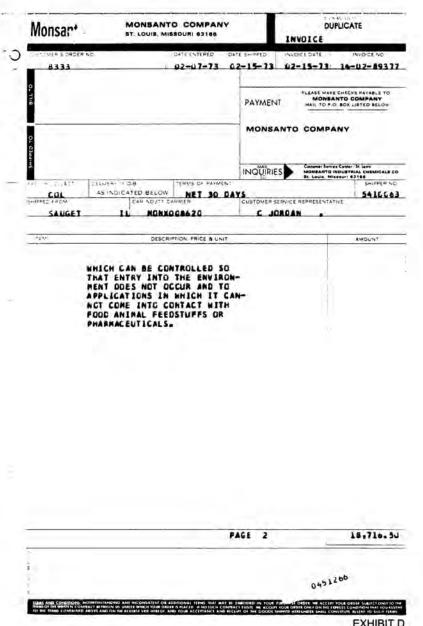
  1. 6 demonstrating the size than 90% of the under will be considered a compete fulfillment of the order.

  2. 6 that inflamment up Sales may deliver and Boyer will accept any such excess up to 10% of the order to the majorithm majorithm of 000 pounds.
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been prod compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments the
- 12 MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construed in accordance with the laws of the State of Miscour. This contract constitutes the full understanding at the parties, and a complete and exclusive statement of the terms of their agreement. No conditions, understanding or the parties, and a complete and exclusive statement of the terms of their agreement. No conditions, understanding to agreement purpose, and the production of the terms of their agreement. No conditions, understanding the parties of the production of the

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Page: 160 of 268 PageID

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Page: 161 of 268 PageID ically Filed - St Louis County - January 19, 2018 - 04:37 PM

FORCE MAJEURE. Deliveries may be suspended by either party in the event of Act of God, war, not fire using a scident, floor, seporage, inability to obtain fuel, power, raw materials, labor, containers or transportation tess governmental laws, regulations, orders or action, breakage or failure of machinery or apparatus, instincts in service and the event beyond the reasonable control of such party or in the event of bloom troubs, and the manufacture, shipment, exceptance or consumption of a shipment of the goods or of a material upon which manufacture of the goods is dependent. It, because of any such event. Seller is unable to supply for total demand ne goods, Seller may allocate its available supply of goods, without obligation to durchase similar goods from other ces, among itself and all of as customers, including those not under contract, on such pasks as it estimates the supply of goods. Without obligation to durchase similar goods from other ces, among itself and all of as customers, including those not under contract, on such pasks as it certains to be lable. Deliveries suspended under this section shall be cancelled without featurity, but this contract shall inherwise in undeflected.

2 BUYER'S CREDIT. Soller reserves the right, among other remedies, either to terminate this contract of all further deliveries under it in the event Buyer fails to day for any one shipment when same becomes due yer is inancial responsibility become unsarisfactory to Seller, cash payments or satisfactory security may be Sever for future deliveries and for goods theretofore delivered.

- 3 WEIGHTS AND CONTAINERS. In the case of bulk carload, tank carrutank truck or parge shipments, shippen's segits shall govern unless proved to be in error. Where shipment requires use by Seller of returnable continents to too such conteners shall return a higher and a deposit, in the amount required to Soller must make at the time the cools are paid for. Such ponteries must be kept in good condition, must not be used for any material other than that higher than and must be returned within asty (SOI days from date of shipment. On such containers being so refund in good condition, a refund of the deposit will be made.
- 4. SHIPMENTS. The quantity shipped in any contract month may be limited by Seller to either 1a, the average of the pith's quantities ordered by Boyer hereunder for the preceding contract months, or libit he maximum quantity covered, this contract divided by the number of months in the contract period. Seller shell not be bound to tender delivery of a quantities for which Buyer has not given shipping instructions.
- any quantities for winch Buyer has not given shipping instructions.

  5. LIMITED WARRANTY. Support to the uniqueness of Section 6 and unless otherwise provided herein. Selection 6 and unless otherwise provided herein. Selection 6 and unless otherwise provided herein. Selection 6 and unless otherwise solid hereing shipping and specifications. Subject to the present gradient of the provided herein. Selection 4 selection of the provided herein. Selection 4 selec
- ANY OTHER MATTER WITH RESPECTTO THE GOODS, whether used along of incombination with other substances. A LIMITATION OF LIABILITY Within thriv 130 days after receipt of each shipment of goods soot hereunder. Buyer shall examine such goods for any damage, referets or shortage. An claims, including for singled gamaged or defective shall examine such goods for any damage, referets or shortage. An claims, including for singled gamaged or defective made in writing and receipted is sheller within sixty (60) days after Buyer a receipt of the goods or within thirty (30) as after flaver learns of the facts giving rise to the claims, which lever shall first accur, provided however, that goods are writing and received by Seller or prodessing or in further manufactural of claims, shall be claimed swared unless made in writing and received by Seller or prodessing or in further manufactural of claims, which are because the goods or writing that discoverable only in prodessing or in further manufactural of claims, shall be because divided the prodessing or instruction and received by Seller of the facts giving one to the claims and the prodessing of the goods of writing that (30) assisted study sellers are the facts giving one to the claims which are the claims and unconditional waver of such claims, shall be deemed an absolute and unconditional waver of such claims, shall be deemed and absolute and unconditional waver of such claims, shall be deemed and absolute and unconditional waver of such claims, and the time bears shall have removed whether processing use or resale in the quality of shall be deemed and absolute and unconditional waver of such claims, and the time bears shall not be claim for one and the production of sections of the deem of the shall be conditionally the shall be conditionally the shall be conditionally the claims of the production of the shall be conditionally the claims of the production of the production of the production of the producting the production of the production of the production of the prod
- The retry to goods and not be much uness above to the contract, except as are made specifically for an accurately to Buyer's specifications, do not witrings any valid U.S. patent. This werrantly is given upon condition. Buyer promptly notify Sulfer of any Calim or suit involving Buyer or which such intringement is alleged and if Seller flexibility that Buyer perms. Seller to control completely the detense or compromise of any such allegation of intringer in Seller does not warrant that the use of any goods sold fereunder, or articles made their prompt. The seller does not warrant that the use of any goods sold fereunder, or articles made their prompt. The seller does not warrant that the use of any goods sold fereunder, or articles made their prompt. The seller does not warrant to the control of the seller does not warrant to the seller does not be prompt. The seller does not warrant to any underwered goods as being agreed that in the event of such termina-
- FREIGHT-TAXES. Any increase in freight rates baid by Seller on shapments covered by this contract and any power imments charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, or individually the goods or in producing materials used therein, and any tax now in effect or increase in same pays, the Seller because of the sale of the goods such as Sales Tax. Use Tax Retailer's Occupational Tax Gross of Siller may at Seller s ofton be added to the price increase in herein specifies.
- 9 LOSS IN TRANSIT. In case of brookage or use in transit. Buyer iskall have notation of same of
- PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an persuits from product to be made up specially for Buyer.

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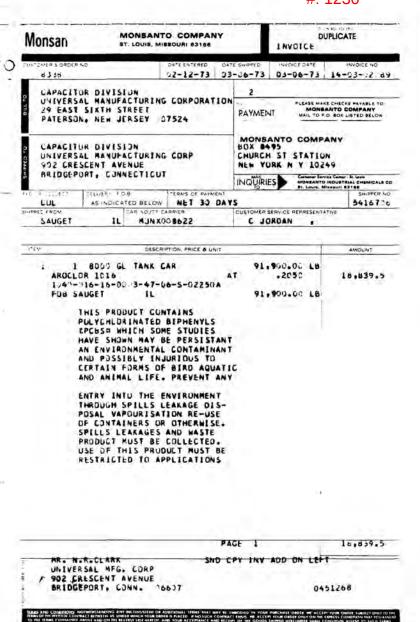
  2. In case, of an over-turn, Seller may deliver and Buyer will accept any such excess up to 10% of the order tail or order trans. 1,000 populses.
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto
- 12 MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and constitued in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and exclusive situational of the terms of their agreement. No conditions, undermade in writing and signed by the party to be sound, and no modification shall be effected by the acknowledge-made in writing and signed by the party to be sound, and no modification shall be effected by the acknowledge-made in writing and signed by the party to be sound, and no modification shall be effected by the acknowledge-made in writing and signed by the party to be sound and no modification shall be defected by the acknowledge-made of any other crefibed, and no course of dealing, shall be deemed to constitute acknowledge any other breach or contribute of default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be sound.

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Page: 162 of 268 PageID

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Page: 163 of 268 PageID

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- 1 FORCE MAJEURE: Deliveries may be suspended by either perty in the event of Act of Gollosian accident flood, sabotage, inability to obtain fuel power, raw materials, lebor, continents disease, governmental laws, regulations, profess or action, breakage or failure of machinery or ense redurfements or any other event beyond the reasonable control of such party or in thelevent ke jockbut or injunction furnishers or not such labor-event is within the reasonable control of such advants the manufacture, shipment, acceptance or consumption of a miniment of the goods or of a main manufacture, shipment, acceptance or consumption of a miniment of the goods or of a main manufacture, of the goods is dependent. If, because of any such event, Seller is unable to apply the goods, Seller may allocate its available supply of goods, without obligation to purchase similar grows, among itself and all of its customers, including those not under conflect, on such base as if inshire. Deliveries suspended under this section shall be cancelled without lability, but this contract was undertained.
- WEIGHTS AND CONTAINERS. In the case of bulk carboid tank our, tenk thick or barge shipments a sis shall govern unless proved to be in error. Where shipment requires use by Seller of returnable con-such containers and remain in Seller and a deposit of containers used by Seller of returnable con-such containers and it remain in Seller and a deposit of containers used for an interest order in a deposit of the containers and must be recurred within salty into a six from date of shipment. On such containers being or good condition, a refund of the deposit will be made.
- so in good colonion, a refund of the deposit will be made. 
  SHIPMENTS. The quantity shipped in a his contract month has be limited by Seller to either fall the average of the infly quantities ordered by Buyer hereunder for the preceding contract months, or toll the maximum quantity covered his contract period. Seller shall not be bound to develope the scontract period. Seller shall not be bound to length equalities for which Buyer has not given shipping instructions.

  [IMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise provided herein. Sellerants title and that all goods soid hereunder shall conform to Seller as standard specifications subject to the precedening the analysis of the section
- NY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or incombination win outer substitute. 
  LIMITATION OF LIABILITY Within thirty (30) days after recent of each shoment of goods soid hereunded enamines such gloods for any dament of each shoment of goods soid hereunded enamines on gloods and should gloods for alleged canaged or discretize the performance is shall be germed within the property of the goods of goods and and goods of the
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- FREIGHT-TAXES. Are increase in freight rates held by Selleri on shipments covered by this contract an governmental height or increase in same herialitie becoming effective increasing the cost to Selleri of procura-go or tervation the ignostic or of procurary materials been financial and any tax now in effect or increase in same is the Seller terration. If the value of the goods, butch as Selleri 7 ac, Dige Tax, Retailer's Occupational Tax C by Tax, Principles and Selleri is sellerity to the price herein specifies.
- A LOSS IN TRANSIT In case of larger age or loss in transit. Buyer share
- PLASTIC MATERIALS Binamore of the conditions involved in the minufacture of plastic materials where an as a few applicability to the materials section of Buyer A 6 progray detail was then 90% of the coder will be a made at a complete fulfillment of the order of 2 in materials are not of an ever run. Select may deliver and toyer will accept, any such ascess up to 10% of the argue run and materials. DOC promotes
- 1.1 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.

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**EXHIBIT D** 

Page: 164 of 268 PageID





1' FORCE MAJEURE: Deliveres only the Subjected by either party in the event of Art of God war, not free explosion, accident, frood, sabulding importly to obtain field, dovers, not materials, labor, continues of termsportation facilities, governmental lines, includes making as failure of machinery for international defaults requirements or any other event swared the reasonable pointed of such party or in the event of labor structures street, lockout or importance whether an antistuch-abor waver is writing the reasonable pointed of such party or in the event of labor structures the manufacture, shipment, accordance of consumption of a shipment of the godes or of a material upon which manufacture of the godes or godes, a deprivation of a shipment of the godes or of a material upon which manufacture of the godes or godes, a deprivation of the manufacture event. Solve its somethe to specify the total demand for the godes. Supplied without off-godes or godes as deprivation of the godes or godes as deprivations of the godes or godes as the contract of the godes of the godes or godes as the godes of the godes of the godes of the godes of the godes of the godes of the godes of the godes of godes or

- BUYER'S CREDIT. Select reserves this light, atriany differ remodes, either to terminate this contract or to sub-further deliveres under it in the urvect Buyer falls for pay for any one shipment when some becomes due. Should be found to the processing wind processing unsafecting to Simple, contributions or satisfactory security may be required for for future deliveries and for goods theretofore pleasand.
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- 7. PATENTS. Se'air variants that any goods bold pursuant to the contract, except as are made specifically for your occurring to Buyer's specifications, to not infringe any valid U.S. patent. This warranty is given upon condition it Buyer promote profit on the Surface of any sound so suit involving Buyer in which such infringement is allowed and if Select function, that Surgice passing Select in countral compliately the defense or compromise of any sound allegation of interage-introduced, not active so not warrant that the use of any goods sold intervalent, or articles made therefore, enter alone or comproficion with other materials, will not infringe a patent Select assays the right, to terminate Select's obligations, user his Selection 7 at any time with respect to any undefined global, "I being agreed that in the event of such terminates."
- B FREIGHT-TAXES, any increase in freight rates paid by Suller on shipmants covered by this contract and any e at any eminemal charge or increase in some hereofter becoming effective increasing the cost to Sefer of producing, freight of containing the goods or of procuring materials used therein, and my tax risks in reflect or increase in same pay-freight of the many and Seller's option, be added to the price freight and only tax risks. Retailer's Occupational Tax, Gross-seights Tax, may, at Seller's option, be added to the price freight and produced.
- 9. LOSS IN TRANSIT. In case of breakage of loss in training, Buyer shall have notation of same made on expense
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an elect pairs for a product to be made up specially for Buyer and the product to be made up specially for Buyer and the product of the product will be considered a complete fulfillment of the order of the cream of the product will be considered a complete fulfillment of the order of the product of the pr
- FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced inpliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12. MISCELLANEOUS. The validity, interprotation and performance of this contract shall be governed and construed in accordance with the laws of the State of Missour. This contract constitutes the full understanding of the pariety and accordance with the laws of the State of Missour. This contract shall be binding unless understand the state of the state

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**EXHIBIT D** 

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Page: 166 of 268 PageID

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**EXHIBIT D** 

Page: 167 of 268 PageID

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#### TERMS AND CONDITIONS

FORCE MAJEURE. Deliveries may be suspended by entire party in the event of Act of God, was not fare, explosion, accident, flood, suborage, inability to obtain fuel, sower, raw, materials, labor, containers or sample them, industry or action, breakage or failure of machinery or apparatus of the control of the sample of machinery or apparatus of the control of the sample of machinery or apparatus of the control of the sample of the control of the control of such party or in the party of the party or in the

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7. PATENTS. Seller warrants that are seller solds sold pursuant to this contract, except as are made specifically for year according to Buyer's specifications, so not infringed any value U.S. batent. This warranty is given upon condition to Buyer printing the period of the period of solds of the period of the peri

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8. FREIGHT-TAXES. Any individual in fleight ratius paid by Soller an shipments crieded by this collection in the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the goods, such as soles Tax. Dist Tax. Platter's Occupation of the state of the goods, such as Soles Tax. Dist Tax. Platter's Occupation of the state of the goods such as Soles Tax. Dist Tax. Platter's Occupation of the state of the goods such as Soles Tax. Dist Tax. Platter's Occupation of the state of the goods such as Soles Tax. Dist Tax. Platter's Occupation of the state of the goods such as Soles Tax.

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10 PLASTIC MATERIALS. Because of the consultions involved in the manufacture of plastic materials, where an 1-A collection of plastic materials where an 1-A collective of individuals may 90% of the order will be considered a complete fulfillment of the order 1-2 min consultant Seller may deliver and Buyer will accept any such excess up to 10% of the order but not must that 1-000 people.

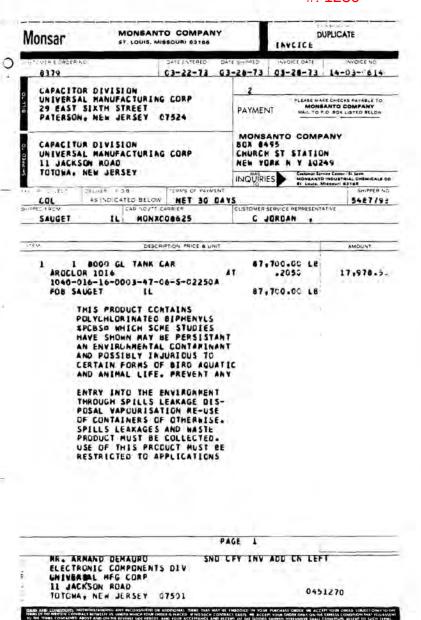
11 FAIR LABOR STANDARDS ACT. The meterial covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments therefore.

12. MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and constructed and construction of the contract of the contract shall be governed and constructed and cons

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**EXHIBIT D** 

Page: 168 of 268 PageID



ElePage: 169 of 268 PageID

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- 1. FORCE MAJEURE. Deliveries may be suspended by either party in the event of Act of ploson, accident, flood, sebolage, inability to obtain fuel power, naw materials, labor, contains, interes, operamental laws, regulations, orders or actions, preakage or failure of machinery or lense requirements or any other event beyond the reasonable control of such partyor in the evise lockout or injunction inwhether or not such labor event is within this reasonable control of such partyor in the evision lockout or injunction twistener or acceptance or consumption and shipment of the goods or of a remaillature of the goods is dependent. It because of any such event, Seller it sunds to suptite goods. Seller may allocate as available supply of goods, without obligation to purchase similarces, among itself and all of its customers, including those and under contract, on such base as utable. Deliveras suspended under this section shall be cancelled without tability, but this port and unaffection.
- WEIGHTS AND CONTAINERS. In the case of buils carload, tank car, tank trick on his shall govern unless proyect to be in error. Where shipment requires use by Ser o such containers shall remain an Seller and a deposit in the ambunit required by Ser is are paid for Such conference must be kept in good condition must not be used to see therein and must be returned within safty (60) days from date of shipment. On d in good condition, a refund of the deposit will be made.
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- ANY DEFINED THE WITH RESPECT TO THE GOODS, Whether used alone or in combination with other subANY DEFINED THE WITH RESPECT TO THE GOODS, whether used alone or in combination with other subBLIMITATION OF LIABILITY Within thirty (30) days after receipt of each shipmen of goods sold hereunde
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- FREIGHT-TAKES Any increase in freight raight ped by Seller on shapments covered by this correction of pour million and the property of processes of same hereafter becoming effective increasing the cost to Seller go inferious plane goods or of procuring materials useff indeen, and any sea now in effect of increasing the solds of the goods, such as Seles Tax. Use Tox. Pataller's Occupation of Star may a Seller's policy to be able to the process.
- 9 LOSS IN TRANSIT. In case of breakage or loss in transit<sup>3</sup> Buyer shall have notation of same made
- 10. PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an diar culti-free a precise for the mode up Specially for Buyer.

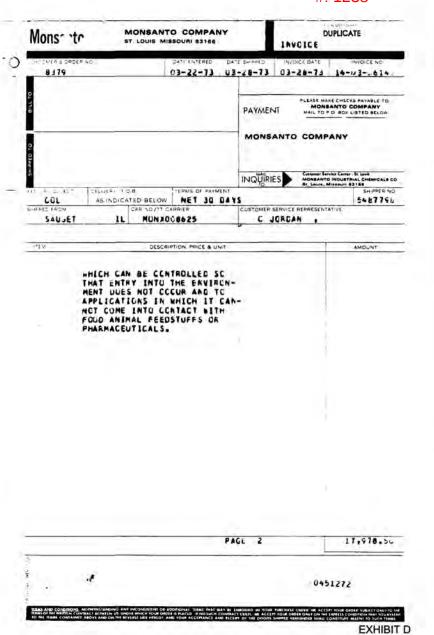
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- 11 FAIR LABOR STANDARDS ACT, The material covered hareunder is warranted to have been produced compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto
- 1.2 MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed sconstrued macro-dance with the laws of the State of Missour. This pointract constitutes the full understanding of the state of the source of the state of the source of the state of the source of the state

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Page: 170 of 268 PageID



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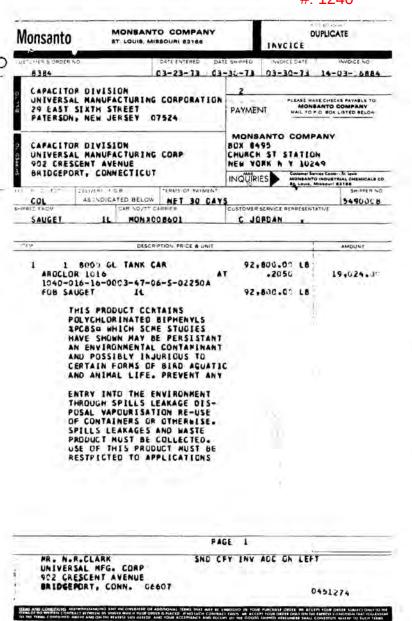
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- FORCE MAJEURE. Deliveries may be suspended by either party in the event of spon, accident, flood, saborage, inability to obtain fuel, power, raw materials, lator, ress, governmental laws, repulations, orders or actory, breakage or failure of machine sequirements or any other event beyond the reasonable control of such party or most the manufacture, single-ment, acceptance or consumption of a shument of the goods nanutacture of the poods is dependent. If, because of any such event, Seller is unable to goods failure may allocate its available supply of goods, without obligation to purch, as, among deal and all of as customers, including those not under contract, on such that a subsection is supplyed to the contract of the poods.
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- pand therein and must be returned within sixty (60) days from date of shipment. On such conteners being so year in good companior, are fund of the deposit will be made.

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- PATENTS: Selies segment to the goods sells pursuant to this contract, except as at an article my Selies. Segment that any goods sells pursuant to this contract, except as at an article my to Buyer in which sells in the segment purpose, and the sell segment purpose outs. Selies of any pump or such receiving Buyer in which such infringement conditions that the sell sells of control comprisely the defense or compromise of any such sells of the se
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- FAIR LABOR STANDARDS ACT. The material covered hereunder is werranted to have been produced plance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- 12 MISCELLANEOUS. The veliday interpretation and performance of this contract shell be governed constructed in accordance with the laws of the State of Missouri. This contract constitutes the full understart of the parises, and a complete and exclusive statement of the terms of these agreement. No conditions, understanding or agreement purporting to mostly to some the terms of this contract shell be binding unless hereal contracts and the binding unless hereal conditions are contracted to the properties order or shipping instruction forms containing terms or conditions at variation in addition to those set forth herein. No waiver by either Seller or Buyer with respect to any breach finally or of any right or remady, and coloured of dealing, shall be deemed to constitute a continuing waiver, some pleach or cefault or of any other right or remady, unless such waiver be expressed in writing sign.

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Page: 173 of 268 PageID

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1 FORCE MAJEURE: Deliveries may be suspended by either perty in the event of Actionson accident floads sabstage, inability to obtain fuel power raw materials, whore containes, governmental leaks, requisitions, orders or inclinion, breakage of fauther of machinery tense requirements for any other event beyond the ready-label control of such party or in this, lockoul or injunction inwhere or not such flaging event is within the reasonable control of svents the manufacture singment, acceptance or consumption of a shipment of the goods or owners the manufacture singment, acceptance or consumption of a shipment of the goods or mendature of the goods is observed if. Declaye or farry such event sollers in unable to the goods, Seller may allocate its available supply of goods, without obligation to purchase stress among steel and all of its outcomes, including mask nor under coefficient or such observed as suppended under this section shall be conceined without liability, but this claim unaffected.

- were not tourse generales and to goods therefolder delivered.

  WEIGHTS AND CONTAINERS, in the case of buyle caread, tank car, tack
  its shall govern unless proved to be in error. Where shipment requires under content extended to the content of the
- A SHIPMENTS. The quantity shipped in any centract month may be limited by Seller to either list the pothly quantities ordered by Buyer hereunder for the preciding contract months, or to the maximum out into contract divided by the number of months in the contract periods. Seller shall not be bound to in a quantities for which Buyer has pot given shipping instructions.

  5. LIMITED WARRANTY. Subject to the furnitations of Section 6 and unless otherwise provided arrants title and that all goods sold hereunder shall conform to Seller's a standard specifications. Subject specification is expected on the provided provided provided prior to the Seller's standard specifications. Subject y sentence and except so otherwise expressing provided herein. SELLER MARES NO REPRESENTA PARTICIAL ANY CITIES MARTHER WITH HESPECT TO THE GOODS, whether used alone or in combination with our ANY CITIES MARTHER.
- ANY OTHER MATTER WITH RESPECT TO THE GOODs, whether used alone or incombination with other 6. LIMITATION OF LIABILITY Within their 1301 days after receipt of each shipment of goods sold here and examine source goods for any dimage defects or shorteder. All claims, instituting for allegad damaged cods, shortage negligance or any other dause withstood and their performance. It shall be deemed with says after Buyer learns of the facts giving rise to the claim, whichever shall first occup, provided, however was after Buyer learns of the facts giving rise to the claim, whichever shall first occup, provided, however, and lead the performance not reasonably discoverable within shift sixt (60) flav period including that disc processing are in further manufacturer all claims shall be deemed wavely gives made in writing and received in a product of the provided of the period shall be deemed and an allocated and or writing and received in the provided of the period shall be deemed and allocated and unsoling and any unsolintonal wavel of such claim shall have been shall be taken given an allocated and unsolved and unsolved and provided and provided and the shall be deemed on a discovered or of whether processing, the pands shall be the made given and the shall have then been discovered or of whether processing the same or annables resulting from any cause whatsoever, including alleged regigence is half in or ever such grows because the included for any cause whatsoever, including alleged regigence is half in or ever such grows because the receiver of the person linguity and or such grows the provided provided the provided by sold or provided the personal impact the receiver its beautiful administry, whether Buyer is claim as an contract, registeric, except as are made to the receiver it goods shall not be and unless authorized in advance by Solder.
- 8 FREIGHT-TAXES. Any increase in freight rates paid by Seller on shapments covered by this contract and any or governments crarge or increase in some hereafter becoming effective increasing the cost to Seller of producing, ing., or de-ver in the goods or of procuring materials used therein, and any tax now in effect or increase in some payers; the Seller textuals of the salle of the goods, such as Sales Tax. Use Tax, Retailer's Occupational Tax, Grosse-pis. Tax May, at Seller's option, be added to the price herein specified.
- 9 LOSS IN TRANSIT In case of premisage or loss in transit. Bufer shall have hotellon of same
- 10. PLASTIC MATERIALS. Because of the conglishes involved in the manufacture of plastic materials, where are the case for a product to be made up specially for Buser.

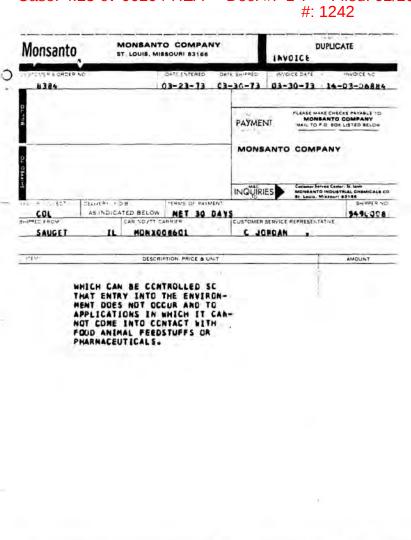
  1. A diservit of not less than 90% of the arder will be considered a complete fulfaliment of the order.

  2. In case of an inventor. Selections deliver and Buyer soil accept any such excess up to 10% of the order but not much than 1,000 purpose.
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments.
- 12 MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construed in accordance with the laws of the State of Missour. This contract constitutes the full understending of the parties, and a complete and exclusive statement of the terms of their agreement. No conditions, understanding or agreement purporting to modify or very the terms of their agreement. No conditions, understanding or agreement purporting to modify or very the terms of their agreement. No conditions, understanding or agreement or acceptance of purporting to the participant of the pa

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Page: 174 of 268 PageID



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Page: 175 of 268 PageID

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- 1. FORCE MAJEURE. Deliveries may be suspended by either party in the event of Act of God, war, not fire allos on accident, flood, sabbitage, inability to obtain fluel, power, raw materials, labor, containers or transportation eithers, governmental laws, regulations, orders or action, broakage or failure of machinery or appearate, national fluels are requirements or any other event love and in reasonable control of such policy or in the event of labor transportation. In the supplementation of the event of labor transportation of the event of labor transportation of a shipment of the goods or of a material upon which manufacture of the goods is dependent if, because of any such event Sallies is unable to supply the total demand the goods. Seller may allocate its available supply of goods, without obligation to surchase semilar goods from other cases, among itself and all of its customers, including those not under contract, on such basis as it determines to be utable. Deliveres suspended under this section shall be cancelled without hability, but this contract shall otherwise had underted.
- unensered BUYER 3° CREDIT. Shiller réservés (the right, among other remedies, either to terminais this contract further deliveries under it in the event Buyer fails to pay for any one shipment when same becomes o a financial responsibility become unsatisfactory to Seller, cash payments or satisfactory security may blier for future delivered.
- WEIGHTS AND CONTAINERS. In the case of built carload, tank car, tank true is shall govern unjust proved to be in error Where sharpment requires use to see the case of the cas
- turned in good condition, a refund of the deposit will be made.

  4. SHIPMENTS The quantity shipped in any optimization and by believe to either rial the average of the monthly quantities ordered by Buyer hereunder for the preceding contract months, or for the maximum quantity covered by this contract divided by the number of monits in the contract penind. Selfer shall not be bound to fender delivery of any quantities for which Buyer has not given shipping instructions.

  5. LIMITED WARRANTY. Subject to the limitations of Section 6 and unless otherwise provided herein. Selfer warrants tritle and that all goods sold hereunder shall contorn to Selfer's standard specifications. Subject to the preceding selfer and succept as otherwise perpossly provided herein. Selfer subjects NO PEPPESENTATION OR WARRANT SELFER MARKES NO PEPPESENTATION
- OR ANY OTHER MAINTER WITH RESPECTTOTHE GOODS, whether used alone or incombination with other subsite of the Combination of ELABILITY Within theiry (20) days after recept of each shipment of goods sold hereunder ship against such goods for any damage, defects to shortage All coams, including for alleged damaged or demands are combined to the combination of the combination
- In the return of gnods shall not be past unless authorized in advance by Seller.

  PATEMIS, Seller warrants that any googs sould pursuant to this contract, except as are made specifically for Buyer according to Briver's specifications, or not introge any valid U.S. patent. This warranty is given upon condition that Buyer promptly more, Seller of any claim or suit movelving Buyer in which such infragments is alleged and it Seller is affected that Buyer permit Seller to control completely the defense or compromise of any such allegation of infrage ment. Seller does not warrant that the use of any global solid hereunder, or affected made such as a new part of the seller of the seller of the seller of the seller and the seller seller and the seller is obligations under this Section, 7 at any time with respect to any underlivered process, allering specified in the event of such termina-tion Buyer may, without penalty, thereafter refuse acceptance of any underwered goods.
- FREIGHT-TAXES. Any increase in treight rates paid by Seller on shipments covered by this contract and any increminate charge or increasing the cost to Seller as manner hereafter becoming effective increasing the cost to Seller as present and any or down in the goods not procuring materials used therein, and any tea now in effect or increase in same payor the Serier because of the same of the goods, such as falses. Tax. Use Tax. Petaler's Occupational Tax. Gross often as Seller's otherwise because.
- 10 PLASTIC MATERIALS. Secause of the conditions involved in the manufacture of plastic materials, where an other arises the apputated to be made up specially for Buyer.

  1. As a warry of this has 50% of the order will be considered a complete furtiliment of the order.

  2. In case, of an exercise, Sourceway deliver and Buyer will accept any such ascens up to 10% of the order, has an exercise. Source may deliver and Buyer will accept any such ascens up to 10% of the order.
- 11 FAIR LABOR STANDARDS ACT. The material covered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.
- in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto 12. MISCELLANEOUS. The validity, interpretation and performance of this contract ball be governed and construed in accordance with the laws of the State of Missouri. This contract constitutes the full understanding of the parties, and a complete and exclusive statement of the terms of their agreement. No conditions, understanding or agreement purporting to modify or virty the terms of their agreement. No conditions, understanding on writing and signals by the party to be bound, and no modificator shall be defined by the activities when the condition of the state of the sound of the state o

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Page: 176 of 268 PageID

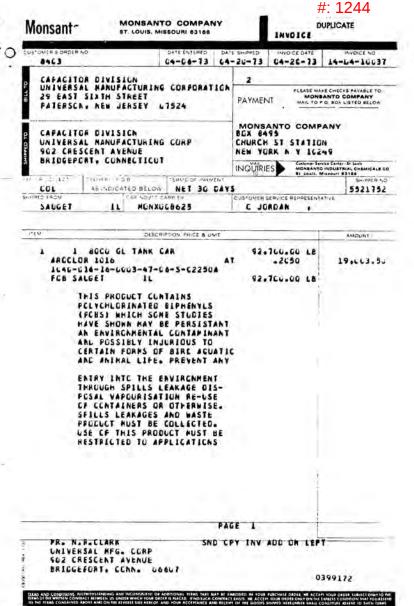


EXHIBIT D

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Pronically Filed - St Louis County - January 19, 2018 - 04:37 PM

MONSANTO COMPANY

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TERMS AND CONDITIONS

"FORCE MAJEURE. Delivered may be suppended by either party in the event of Act of God, wer rice, fee, explosion, account flood, sabriage matrily to obtain fuel, sower, raw materials, abore, containers or variablestation facilities, god-ernnestal lives, regulations, orders or action, breakage or feature or machinery or apparatus, national defends requirements or any other event beyond the reasonable control of such party or in the event of labor trouble, strike, lockout or important in inheritor or not such labor event, is within the reasonable control of supply, which enter prevents the manufacture, shownort, accustance or consumption of a shipment of the goods or of a material upon which the manufacture of the goods is dependent. It becaute of any such event, Sellier is unable to young they to defended for the goods. Saller may allower this available supply of goods, without obligation to purchase smilet good from other sources, among steel and all of its customers, including Indee not under contract, on such base as it determines to be equilable. Described supplied under this section shall be cancelled without liability, but this contract shall otherwise remains unprocessing.

2 BUYER'S CREDIT. Sellor reserves the right, among nither remedies, either to terminate this contract of to sus-of further deliveries under it in the event Buyer fails to pay for any one sharment-when same becomes due. Should year induced resolues byte become unswestellator to Soling, cash payments or sansfactory security may be required. Safer for future deliveries and for goods thereting a delivered.

by select for nature deliveres and for groots therefore delivered.

3. WEIGHTS AND CONTAINERS. In the case of built cartood, have car, tank truck of barge silkpments, shipper's weights shall govern unless proved to be in error. Where shipment-requires like by Select of returnable containers, tale to such containers shall remain in Select and a deposit in the amount required by Select must be made in the time free gloods are paid for "Surn ownarium may be kept in good container, must not be used for any indered other than that shapped lighted with must be identified without and within the shapped lighted with mist be delivered in ground send than the transfer of the made.

Number is granted and the architect of the deposit will be made.

4. SHIPMENTS: The updaths imported in any contract month may be limited by Seller to either tall the everage of the moenthy quantities ordered by Buyer foreuroner for the preceding contract months, or foll the maximum quantity observed by this contract of contract months, or foll the maximum quantities by the contract of period is seller shall not be bound to tender delivery if any quantities for which Buyer has not given shipping instructions.

5. LIMITED WARRANTY, Subject to the limitations of Section 6 and unless otherwise provided herein. Seller warrants the and that all goods sold herounder shall conform to Seller's standard sourclastions. Subject to the preceding sentence and excent so otherwise expressly provided herein. Seller MARES NO PERPESSIVATION OR NYAR OR ANY OTHER MAY LER WITH RESPECTION THE GROOS, whether used alone or in combination with other substances.

OR ANY CITER NATION OF LIABILITY When ther? 30 days after a visible of each sharper of goods sold nerrander. Buyer and sharpers of the sharper of goods sold nerrander. Buyer is an exhibition of the sharper of goods sold nerrander. Buyer is an exhibition of the sharper of goods of the sharper of goods sold nerrander. Buyer is an exhibition of the sharper of the sha

PATENTS. Solver overwise that are great understandant or according by select processing as are made specifical enumerating to Esser's specifications, as not interior any valid U.S. patent. This warrant is given uson some bown primpry, mostly. Select and any sciency is such reviewing Bown in which such intringeness is along an active that Blazer per and Select in control completely the defense or compromise of any such allegation of all Select areas in weight that the use of any grades sold hereunder at acticle made therefore, where it is a selection of the

8 FREIGHT TAXES Any increase in freight rates paid by Seler on shipments covered by this contract and any tax or givernments charge or increase in same hierarcher becoming effective increasing the cost to Seler of producing solling, or deviewing the globals or of producing materials used therein, another tax now in effect of increase in same pay able by the Seleri sections of the sale of the goods, such as Seles Tax. Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may in Sinite's option, be added to the princip Nervin Specified.

9 LOSS IN TRANSIT. In case of prealings or loss or trunsit. Buyer shall have notation of same made of

10 PLASTIC MATERIALS. Because of the conditions involved in the manufacture of plastic materials, where an other pails for a product to be made up specially for Buser.

1. A second of not one than 90's of the order will second and of complete fulfillment of the order.

2. In place, pit an over run. Serier may gener and Buser will accept any such estats up to 10's of the under pain an investigation. 1,000 painting.

11 FAIR LABOR STANDARDS ACT, The material govered hereunder is warranted to have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.

in compliance with the requirements of the Fair Labor Standards Act of 1938, and with all amendments thereto.

12. MISCELLANEOUS. The validity, interpretation and performance of this contract shall be governed and construed in accordance with the laws of the State of Massour. This contract constitutes the full understanding of the parties, and a complete and acclusive statement of the terms of their agreement, our performing to modify or vary the terms of this contract shall be binding unless hereafter expending the properties of the properties o TALLY O A

PROPERTY AND ADDRESS.

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**EXHIBIT D** 

Page: 178 of 268 PageID

Doc. #: 1-7 Filed: 02/20/23 Case: 4:23-cv-00204-HEA #: 1246 MONSANTO COMPANY Monsant<sup>-</sup> DUPLICATE INVOICE C4-06-73 C4-20-73 C4-26-73 14-G4-10C37 8463 MONBANTO COMPANY
MAIL TO F.O. BOX LISTED BELOW PAYMENT MONSANTO COMPANY INQUIRIES Center Forice Center: SI Tavia DE YES LIVE FOR 5521752 AS INDICATED BELOW | NET 30 CAYS COL USTOMER SERVICE REPRESENTATIVE SALGET 11 MCAXULB625 C JURDAN 911.5 DESCRIPTION PRICE & UNIT WHICH CAN BE CONTROLLED SO THAT ENTRY INTO THE ENVIRON-MEMI DOES NOT OCCUR AND TO APPLICATIONS IN WHICH IT CAN-NOT COME INTO CONTACT WITH FOOD ANIMAL FEEDSTUFFS OR PHARMACEUTICALS.

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\*\*PORCE MAJEURE. Deliveries may be suspended by either party in the eyent of Act of God, war, Act, the applicant, accidents flood, sabridage, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, governmental taws, regulations, orders or action, breakage or fealing of machinery or apparatus, national defense requirements or any other event beyond the reasonable control of such party or in the event of labor trouble, strike, lockout or injunction whether or not such labor event is within the reasonable control of such party, which event prevents the manufacture, shipment, acceptance or consumption of a shipment of the goods or of a material upon which the manufacture of the goods is dependent. If, because of any such event, Seller is unable to supply the total demand for the goods. Seller may allocate its available supply of goods, without obligation to purchase similar goods from other sources, among stell final eliof its customers, including those not under contract, on such basis as if determines to be equitable. Deliveries suspended under this section shall be cancelled without liability, but this contract shall otherwise remain unaffected.

- 2 BUYER'S CREDIT. Seller reserves the right, among other remedies, either to terminate this contract or to sus-nd further deliveries under 4 in the event Buyer fails to pay for any one shipment when same becomes due. Should year 5 financial responsibility become unsainsfactory to Soller, dash payments or satisfactory security may be required. Seller for future deliveries and for goods thereinfaire delivered.
- by seller for ruture deliveries and for goods therefoldere delivered.

  3. WEIGHTS AND CONTAINERS. In the case of build carload, tank car, tank truck or barge shipments, shipper's weights shall govern unless proved to be in erfor. Where shipment requires use by Seller of returnable containers, tale to such containers shall remait in Seller and a deposit in the amount required by Seller be made at the time the goods are paid for. Such containers must be kept in good condition, must not be used for any material other than that shapped therein and must be returned within safe (20) days from date of supment. On such containers being so returned in great candidate. A refund of the deposit will be midde.
- A SHIPMENTS. The quantity shaped in any contract month may be limited by Seller to either, (a) the average onliny quantities ordered by Buyer hereunter for this preceding contract months, or (b) the maximum quantity in the contract divided by the number of months, it the contract devided by the number of months, or the contract devided by the number of months, or the contract devided by the number of contract period. Seller shall not be bound to tender dely quantities for which Buyer has not given shapping instructions.
- any quantities for which Buyer has not given shipping instructions.

  5 LIMITED WARRANTY. Subject to the imitations of Section 6 and unless otherwise provided higher in Selfondard specifications. Subject to the preceding sentence and accept as alterwise expressly provided higher. SELER MAKES NO REPRESENTATION OF WAR RANTY OF ANY KIND, EXPRESS OR MINIED, AS TO MERCHANTABILITY. FINESS FOR PARCILLAR PURPOSE OR ANY CHER MATTER W. HIRESPECT TO THE GOODS, whigher used alone or in combination with other substances.
- RANY OF ANY KIND, EXPRESION INTEREST. TO THE GOODS, whether used above in combination with other substances. 
  A LIMITATION OF LIABILITY Virtue (bury 130 days after recept of alect shipment of goods sold hereunder. Buyer 
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  goods, shipping majorities or any other cases whether or otherwise performance it single degeneral valved unless 
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  PATENTS: Some naturalist that any points end growing to this contract, except as are made specifically follower according to Source is small catherine that a property and the second of the specific product of the second of
- 9 LOSS IN TRANSIT in case of breakings at 19 years 19 year shall have notation of same made or
- PLASTIC MATERIALS. Because of the critical activities are well at the manufacture of plastic materials, whose casts for a modulat to be made up specially the Burn.

  1. A greatest of an inversion. Safety may deliver a moderned a complete folialization of the order cast are made to a moderned as a fine may deliver a moderned as complete folialization of the order cast are moderned as to cast any such excess up to 10% of the data are moderned in 1,000 prompts.
- 11 FAIR LABOR STANDARDS ACT. The importance and encoder is warranted to have been produced in compliance with the requirements of the Fair Lieber Standards Act of 1938, and with all amendments thereto.
- an compliance with the requirements of the Pair Latter State and with 1938, and with all amendments therefore and construct in secretarity in the second of the contract shall be governed and construct in second and construct in second or the parties, and in complete and exclusive statement of the terms of their agreement. No conditions, understanding of the parties, and is complete and exclusive statement of the terms of their agreement. No conditions, understanding or agreement in unique and signed by the party to be bound, and no evolutions that be effected by the service when the second distinct of their service and the service of their service service and the service of their services. The service is the service of the service

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**EXHIBIT D** 

Page: 180 of 268 PageID

Electronic Components Division

A.

UNIVERSAL MANUFACTURING CORP.

902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

February 19, 1970

Monsanto Company 1700 South Second Street St. Louis, Missouri 63177

Attention: Dr. R. Munch

Dear Ralph:

In connection with our recent telephone conversation and your subsequent Purchase Order No. L-56870 dated February 10, we will be shipping the material on Monday, February 23. In order to insure that these parts would be as representative and as uniform as possible, I waited until a regular production run was in process, and took them from the middle of the run.

The paper used was from Peter J. Schweitzer Division, Kimberly Clark Corporation, .00066" x 1 3/4", nominal 0.90 density, Lot #9943-5. Foil was R.V. Neher Co. N 4032, .00022" x 1 9/16", taken from 1969 release #12.

I hope this material arrives in good order, and proves to be suitable for your purposes.

Best regards,

ELECTRONIC COMPONENTS DIVISION Universal Manufacturing Corp.

N. Kay Clark, Vice President

NRC/h

**EXHIBIT E** 

Page: 182 of 268 PageID

Case: 4:23-cv-00204-HEA

Electronic Components Division

UNIVERSAL MANUFACTURING CORP.

Doc. #: 1-7 Filed: 02/20/23

> 902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

March 11, 1971

Dr. Ralph H. Munch Monsanto Company 1700 South Second Street St. Louis, Mo. 63177

Dear Ralph:

Thank you very much for the time and effort represented by the data contained in your letters of February 25, 1971 and March 4 to Mike Gianotti. We have had no serious doubts about ability of the Japanese askarel manufacturer to produce a good quality, stable material, but it is good to have con-firmation from the most knowledgeable source. The question still remains, of course, as to whether he maintains sufficient control of his materials and processes to insure that he does so at all times, without exception.

You remarked on the somewhat higher dissipation factor of the Matsushita capacitors, compared with those made by us. You also point out that the dissipation factor of Matsushita capacitors decreases more with increasing voltage than is the case with ours. It is interesting that the minimum dissipation factor with our capacitors is at about 165 volts, whereas with Matsushita capacitors the minimum occurs at about 275 volts. I believe practically all these differences can reasonably be attributed to the difference in density of the paper, perhaps with any differences in the treatment of the pulp from which the paper is made exerting a minor effect.

The change in dissipation factor between the two sets of measurements is interesting. The change is rather small in absolute magnitude, but is undoubtedly real. I would not expect corona at the stresses involved (825 volts per mil, maximum), but as you suggest, the stress must have produced some irreversible effect.

The instability you noted on some of the Matsushita capacitors very likely results from the marginal quality of the contact between the tap and the foil. I recall similar results on measurements made several years ago on capacitors

**EXHIBIT E** 

0079383

Page: 183 of 268 PageID

St Louis County

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1251

Dr. R.H. Munch Monsanto -2-

3/11/71

with plain (not flagged) taps, and note that the contact problem is accentuated at the higher voltages. We consider that plain tap construction is rather marginal at best, and suitable only for the lower voltages.

Best regards,

ELECTRONIC COMPONENTS DIVISION Universal Manufacturing Corp.

N. Ray Clark, Vice President

NRC/h

cc: Paul Benignus, Monsanto MF Gianotti GD Rayno

**EXHIBIT E** 

0079384

Rege: 184 of 268 PageID

Filed - St Louis County - January 19, 2018 - 04:37 PM

Universal Manage ments Division Affect In MINTONER: FILL IN KNOWN DATA
Universal Manage ments Court of Head of the Manage ments of the Manage ment age: 185 of 268 PageID Monsanto PURCHASE ORDER NUMBER DATE 4-59061 PURCHASING DEPARTMENT PLEASE SHOW THIS ORDER HUMBER ON FACH INVOICE, PACKAGE, SILL OF LADING, AND SHIPPING HOTICE. 1700 South Second St. St. Louis, Missouri 63177 REQUISITION - BILLING INSTRUCTIONS -- BILLING INSTRUCTIONS FORMAND TO ADDRESS AT TOP OF THIS FORM

1. ACKNOWLEDSEMENT OF ORDER GIVING SHIPPIND DATE

2. BILL OF LADING IN DUPLICATE

3. INVOICE IN DUPLICATE PRICING LACH ITEM STRABATELY

4. MAIL INVDICES E/A ACCOUNTING DEPT. PURCHASE 8/20/71 -NOTE -ORDER OR SCONE - SHIPPING INSTRUCTIONS -PRIDAY

2. SHIP CHEAPEST ROUTING UNLESS OTHERWISE SPECIFIES

3. DR LOCAL DELIVERIES SURRENDER DELIVERY TICKET SHIP TO MONSANTO COMPANY 100 LAFAYETTE BLDG U-RESEARCH-ST. LOUIS MO. 63177 ITEM QUANTITY UNIT DESCRIPTION 2mfd. unimpregnated test capacitors. Windwill 2,000 manufacturer and manufacturer number of polyethylenc 120 rd manner with to duplicate as nearly as possible Supplied on our order No L-56970 of 2/1/70

SALES TAX APPLIES: USE TAX APPLIES: PURCHASE EXEMPT ADD TO INVOICE FROM SALES /USE TAX U BY SHIPPING THE ABOVE GOODS OR BY ACKNOWLEDGING RECEIPT OF THIS ORDER, MERCATTER CALLED'S CONTRACTION ON THE FACE SIDE AND THE BYLENES SIDE NERGOT ANY OFFERENI OR ADDITIONAL TERMS IN YOUR ACCEPTANCE OF THIS OFFER ARE MERCEN'S OFFERENI OR ADDITIONAL TERMS IN YOUR ACCEPTANCE OF THIS OFFER ARE MERCEN'S ORDER OFFER OFFER ARE MERCEN'S ORDER OFFER OFFER OFFER ARE MERCEN'S ORDER OFF MONSANTO COMPANY SAFETY JOB? D YES COND BUYER 6/17/71 LATE SPETERIAL RECEIVED COMP. SHIPMENT PART Kes, Lah, RIHIMUNIL TAHLAHUS APPROVAL ESTIMATE HO. ACCOUNT C TAX N QUANTITY AMOUNT MATERIAL DIV. LOC. MAIN SUB CLASS DETAIL 2 1630529 EXHIBITE 0079382

UNIVERSAL MANUFACTURING CORP.

Doc. #: 1-7 Filed: 02/20/23 #: 1253

> 902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

July 23, 1971

Monsanto Company 100 Lafayette
Bldg. U - Research
St. Louis, Mo. 63177

Attention: Dr. Ralph H. Munch

Dear Ralph:

We are shipping today the capacitors under your purchase order L-59061 dated June 18, 1971. The paper used in winding these capacitors was made by the Peter J. Schweitzer Division of Kimberly Clark Corporation, their Lot # 9117-2, and was .00066" x 1 3/4", 0.90 density. The foil was made by Robert Victor Neher Ltd., and was from Case #27, release #3 (1971); it was .00023" x 1 9/16".

It was a pleasure talking with you by telephone, and I hope to send you some information on ballast circuits shortly.

Best regards,

ELECTRONIC COMPONENTS DIVISION Universal Manufacturing Corp.

N. Ray Clark, Vice President

NRC/h

**EXHIBIT E** 

0079380

Page: 186 of 268 PageID

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

bcc: P. G. Benignus W. R. Richard

June 17, 1971

Electronic Component Division Universal Manufacturing Corporation 902 Crescent Avenue Bridgeport, Connecticut 06607

Attention: Mr. N. Ray Clark, Vice President

Doar Ray;

You will recall that about a year and a half ago we bought 500 2 mfd unimpregnated test capacitors and 120 impregnated capacitors from the same lot for comparison purposes. These capacitors have enabled us to test our fluids by running life tests on capacitors impregnated with the fluids instead of just measuring fluid properties. We have gained a great deal of insight into the performance of new fluids from this kind of testing.

Since we have used most of the first lot of test capacitors, we would like to secure a new lot as nearly identical to the first as is possible. You will find a copy of our order for 2,000 of the unimpregnated test capacitors and 120 of the impregnated comparison capacitors attached to this letter. The original will be sent to you by our Purchasing Department.

We have found your capacitors to be of uniformly high quality very suitable for the kind of test work we are doing. We greatly appreciate your cooperation in supplying them to us.

Sincerely.

Ralph H. Munch

js attachment

**EXHIBIT E** 

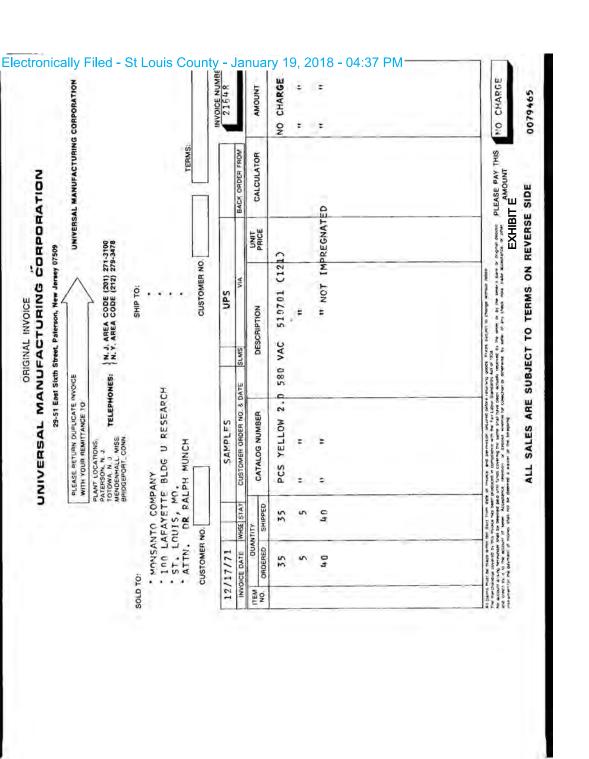
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Page: 187 of 268 PageID

Page: 187 of 268 PageID

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 188 of 268 PageID



Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 189 of 268 PageID

Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

**EXHIBIT** E

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Commonwealth of the foreign for loss or lebbitly, including aughspects arising out of or competed with the manufacture, salit, delivery or regality in use of any ballgass, shall in no raise exempt the part shell Jawesal be liable for special incidental or of descripes. The liability of Universal Yangfacthetic perce of such burlasts. The per system

LIABILITY OF LINIVERSAL, AND IS EXCLUSIVE OF ALL OTHER THE FUREGOING SHALL CONSTITUTE THE SOLE AND EX CLUSIVE REMEDY OF THE PURCHASER AND THE SOLF ING ANY IMPLIED WARRANTY OF MERCHANTARLITY, FITNESS WARRANTIES WHITTER WRITTEN, ORAL OR WINLED, MOLLID OR OF ANY OTHER MELIGATION ON THE PART OF THE SELLED

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UNIVERSAL MANUFACTURING CORPORATION MISSIANI LA عدار الأوار الإمارة الماسان المار المار المار المار المار المارية المارية المارية المارية المارية المارية المارية The same and the s

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set of northead Corporation with the corporation of said falliage or the set of the said fall and the starting fortige of the cost of deriver for derivering derivers

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Case: 4:23-cv-00204-HEA

Capacitor Division

UNIVERSAL MANUFACTURING CORP.



Doc. #: 1-7 Filed: 02/20/23 #: 1258

Page: 191 of 268 PageID

902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

October 6, 1975

Dr. Ralph Munch Monsanto Company Research Center 800 North Lindbergh Blvd. St. Louis, Mo. 63166

Dear Ralph:

The capacitors being supplied to your attention, on Monsanto purchase order RC 92661 are wound with foil from Robert Victor Neher, Release #11, 1974, and with .0005" paper from Peter J. Schweitzer Lot 15533-2, Set A4489-F.

I hope they will be satisfactory for your purposes.

Best regards,

CAPACITOR DIVISION Universal Manufacturing Corp.

N. Ray flark, Vice President

NRC/h

EXHIBIT E 0079379

St Louis County - January 19, 2018 - 04:37 PM

### UNIVERSAL MANUFACTURING CORPORATION

29-51 EAST SIXTH STREET, PATERSON, NEW JERSEY 07509 . PHONE: (201) 271-3100 . TWX NO. 710 988-5934

January 7, 1972

Mr. H.S. Bergen Monsanto Company P.O. Box 14617 St. Louis, Missouri 63178

Dear Mr. Bergen:

Enclosed is the undertaking you requested in connection with our purchase of PCB. As previously discussed, we are executing the undertaking in our own name and are excepting any liability arising from failure of the product to conform to specifications.

This undertaking will be covered by a blanket liability policy with the Travelers Insurance Company having limits of 10 million dollars. As of December 31, 1970, Universal's consolidated net worth was 16.8 million and its current ratio was 1.7 to 1.

Very truly yours,

UNIVERSAL MANUFACTURING CORPORATION

Paul H. Einhorn

President

PHE/paz

This is to certify that policies of insurance as described below have been issued to the insured named below and are in force at this time. It such policies are canceled or changed during the periods of coverage as stated herein, in such a manner as to affect this certificate, written notice will be mailed to the party designated below for whom this certificate is issued.

1. Name and address of party to whom this certificate is issued

Mr. H. S. Bergen Director-Special E Products Group Monsanto Industrial Chemical Co. Post Office Box 14617 St. Louis, Missouri 63178

2. Name and address of insured

Universal Manufacturing Corp. c/o Northwest Industries, Inc. 400 West Madison Street Chicago, Illinois 60606

3. Location of operations to which this certificate applies Anywhere in the U.S.A. Coverages For Which Insurance is Afforded Limits of Liability Policy Number Policy Period\*\* Workmen's Compensation and Employers' Liability in the state named in item 3 hereof Compensation Statutory Bodily Injury Liability -except automobile 10/1/71 to 10/1/72 , 000 each person TRNSL-909307-71 , 000 each occurrence ,000 aggregate† †Completed Operation and Products only cluding Protective Property Damage Liability 000 each occurrence cluding Protective ,000 aggregate Bodily Injury Liability ,000 each person ,000 each accident \*\$10,000,000 Combined Single Limit ,000 each occurrence Property Damage Liability ,000 each accident ,000 each occurrence Liability (Bodily Injury and Property Damage) , 000 each occurrence ,000 aggregate ,'000 each occurrence Catastrophe or Excess , 000 each aggregate , 000 deductible ami.

\*Absence of an entry in these spaces means that insurance is not afforded with respect to the coverages opposite thereto.
\*\*Policy is effective and expires at 12:01 A.M., standard-time at the address of the named insured as stated berein.

Description of Operations, or Automobiles to which the policy applies:

Blanket Contractual Liability Coverage

0422922

The insurance afforded is subject to all of the terms of the policy, including endorsements, applicable thereto.

Produces Marsh & McLennan, Inc. Date 1/17/72

once Chicago

C-5918 REV. 7-68 PRINTED IN U.S.A. 1268

**EXHIBIT G** 

THE TRAVELERS INSURANCE COMPANY THE TRAVELERS INDEMNITY COMPANY THE CHARTER OAK FIRE INSURANCE COMPANY

> m Dow Authorized Representative

Page: 193 of 268 PageID

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Page: 194 of 268 PageID

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January

9

This is to certify that policies of insurance as described below have been issued to the insured named below and are in force at this time. If such policies are canceled or changed during the periods of coverage as stated herein, in such a manner as to affect this certificate, written notice will be mailed to the party designated below for whom this certificate is issued. 2. Name and address of insured 1. Name and address of party to whom this certificate is issued Mr. H. S. Bergen Universal Manufacturing Corp. c/o Northwest Industries, Inc. 400 West Madison Street Monsanto Industries 800 North Linbergh Boulevard St. Louis, Missouri 63166 Chicago, IL 60606 3. Location of operations to which this certificate applies Anywhere in the U.S.A. Coverages For Which Insurance is Afforded Limits of Liability Policy Number Policy Period\*\* Workmen's Compensation and Employers' Liability in the state named in item 3 hereof Compensation- Statutory Bodity Injury Liability -except automobile 000 each person TRNSL-909307-72 10/1/72 to ,000 each occurrence 10/1/73 ,000 aggregate1 (Completed Operation and Products only - cluding Protective Property Damage Liability -cxcept automobile ,000 each occurrence ,000 aggregate cluding Protective Bodily Injury Liability ,000 each person ,000 each accident 000 each occurrence Property Damage Liability \*\$10,000,000 Combined Single Limit ,000 each accident ,000 each occurrence Liability (Bodily Injury and Property Demage) ,000 each occurrence ,000 aggregate ,'000 each occurrence Catastrophe or Excess ,000 each aggregate ,000 deductible anit. \*Absence of an entry in these spaces means that insurance is not afforded with respect to the coverages opposite thereto.
\*\*Policy is effective and expires at 12:01 A.M., standard time at the address of the named insured as stated herein. Description of Operations, or Automobiles to which the policy applies: Blanket Contractual Liability Coverage 0422911 The insurpree all prided is subject to all of the terms of the policy, including endorsements, applicable thereto.

Produce: Narsh & McLennan, Inc. Office. Chicago Date 9/15/72 THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY

EQUITABLE FIRE AND MARINE INSURANCE COMPANY

Secretary, Casualty-Property Department

**EXHIBIT G** 

Secretary, Casualty-Property Department

C-SUIR Rev. 7-68 PRINTED IN U.S.A. 371

This is to certify that policies of insurance as described below have been issued to the insured named below and are in force at this time.

I. Name and address of party	to whom this c	ertificate is issued	1.2. Name and address	borned lo es	
re come non against on butch	To mineral time C	Secure of Course	A. Ivanic and address	se or menten	
La Trans		_2			
-Mr. H. S. Bergen			Universal Manufacturing Corp		oring Corn
Monsanto Ind			c/o Northwe		
800 North Li		Sware from			
			400 West Ma		Carrier Street Company
St. Louis, M	iissouri	03100	Chicago, IL	60606	A . A mul
C		L	ammou	ofor.	\$10 mil
3. Location of operations to wi			app	mel	Lagran
Anywhere in Coverages For Which	the U.S.	Α,_	1	110	2127/12
Insurance is Afforded	Lin	its of Liability	Policy Number	1	Policy Period"
Workmen's Compensation and Employers' Liability in the state named in Item 3 bereof		on Statutory			
	1				
Bodily Injury Liability —cacept automobile		500 - 1	The second second second		
	\$ W	, 000 each person	TRNSL106T220-9-	73	10/1/73 to
	\$	,000 each occurrence	The second secon		10/1/74
	1	,000 aggregate1	1		3.00
cluding Protective		†Completed Operation and Products only			
	· monomum	and Freducts Diny		- 1	
Property Damage Liability —except automobile	the second	200			
	5 ×	,000 each occurrence		- 11	
cluding Protective	\$ .	,000 aggregate			
Bodily Injury Liability	1			- 1	
-automobile		,000 each person		- 1	
	15	, 000 each accident			
	1	, 000 each occurrence			
Properly Damage Liability	1	•	*\$10,000,000 Co	mbined 8	Single Limi
-automobile	8	,000 each accident		- 10	
		,000 each occurrence		1	
				4	
Liability (Bodily Injury and	\$	, 000 each occurrence		1	
Property Damage)	15	, 000 aggregate		1	
		•		1	
State of the State		, 000 each occurrence			
Catastrophe or Excess	15	, 000 each aggregate		- 1	
	18	, 000 deductible amt.			
*Absence of an entry in these s					ereto:
•Policy is effective and expires Description of Operations, or Au			dress of the named insured as	stated herein.	
					- 12
Blanker Cont	ractual	Liability Co	verage	042	2903
he insurance afterded is subject	to all of the to-	rus of the police Includ	or endorsements, applicable th	ereto.	
roducer Marsh & McL			Office Chicago		Date 9/24/
QUITABLE FIRE AND MA	RINE INSUR	ANCE COMPANY	THE TRAVELERS	INSURANCE	COMPANY
, 0		endered harden Artists.	THE TRAVELERS THE TRAVELERS THE CHARTER OF	NDEMNITY	COMPANY
w Holacroon	-		THE CHARTER OF	K FIRE INS	DORANCE COMPA
, 00	7 April 19 7 7 7 7	ent EXHIBIT	G By	1.80 Ser 2	
Secretary, Casualty-Pro	A COUNTY OF THE PARTY OF THE PA	ent LATIDI	- LUX HA	reday Casuali	y-Property Departm

Page: 195 of 268 PageID

\*Absence of an entry in these spaces means that insurance is not afforded with respect to the coverages opposite thereto. \*\*Policy is effective and expires at 12:01 A.M., standard time at the address of the named insured as stated herein. Description of Operations, or Antomobiles to which the policy applies:

,000 each accident ,000 each occurrence

,000 each occurrence ,000 aggregate , 000 each occurrence

,000 each aggregate ,000 deductible amt.

Blanket Contractual Liability Coverage

0047245

The insurance afforded is subject to all of the terms of the policy, including endorsements, applicable thereto.

Producer. Marsh & McLennan, Inc. Office. Chicago

Date 9/15/74 THE TRAVELERS INSURANCE COMPANY THE TRAVELERS INDEMNITY COMPANY THE CHARTER OAK FIRE INSURANCE COMPANY

EQUITABLE FIRE AND MARINE INSURANCE COMPANY

**EXHIBIT G** 

Inture. Secretary, Casualty-Property Department

Property Damage Liability

Liability (Rodily Injury and Property Damage)

Catastrophe or Excess

By Lufamman.
Secretary, Casualty-Property Department

ge: 196 of 268 PageID

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St Louis

January

\*Absence of an entry in these spaces means that insurance is not afforded with respect to the coverages opposite thereto.
\*Policy is effective and expires at 12:01 A.M., standard time at the address of the named insured as stated herein.

Description of Operations, or Automobiles to which the policy applies:

Blanket Contractual Liability Coverage

0422896

The insurance afforded is subject to all of the terms of the policy, including endorsements, applicable theretoProducer Marsh & McLennan, Inc. Office Chicago
EQUITABLE FIRE AND MARINE INSURANCE COMPANY
THE TRAVELERS INSURANCE INSURANC

Date 9/15/75

THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY

By Interson Secretary, Casualty-Property Department

**EXHIBIT G** 

Lufannann Secretary, Casualty-Property Department

C.3018 Rev. 7-68 PRINTID IN U.S.A. 371

Page: 197 of 268 PageID

FILED

St Louis

- January

This is to certify that policies of insurance as described below have been issued to the insured named below and are in furce at this time If such policies are canceled or changed during the periods of coverage as stated herein, in such a manner as to affect this certificate, written notice will be mailed to the party designated below for whom this certificate is issued.

| Monsanto Industrial Chemicals Co. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166

Attn: Mr. James A. Alley

I. Name and address of party to whom this certificate is issued

2. Name and address of insured

Universal Manufacturing Corp. o/o Northwest Industries, Inc. 6300 Sears Tower Chicago, IL 60606

3. Location of operations to which this certificate applies

4. Coverages For Which Insurance is Afforded	Limits of Liability	Policy Number	Policy Period**
Workmen's Compensation and Employers' Liability in the state named in Item 3 hereof	Compensation Statutory		
Bodily Injury Liability —except automobile	, 000 each person		
St.	(000	TRNSL-106T220-9-76	10-1-77 to 10-1-78
	mit (,000 each occurrence		
In cluding Protective	(,000 aggregate		-
Bodily Injury Liability —automobile	\$ ,000 each person \$ ,000 each accident \$ ,000 each occurrence		
Property Damage Liability —automobile	\$ ,000 each accident \$ ,000 each occurrence		
Liability (Bodity Injury and	\$ ,000 each occurrence		1
Liability (Bodity Injury and Property Damage)	\$ ,000 aggregate		-
	\$ .000 each occurrence		
Calastrophe or Excess	\$ ,000 each aggregate \$ ,000 deductible amt.	2	

\*Absence of an entry in these spaces means that insurance is not afforded with respect to the coverages opposite thereto. \*\*I'olicy is effective and expires at 12:01 A.M., standard time at the address of the named insured as stated herein.

Description of Operations, or Automobiles to which the policy applies:

Includes blanket contractual liability.

0422876

The insurance afforded is subject to all of the terms of the policy, including endorsements, applicable thereto.

Produce: Marsh & MoLennan, Inc.

Office. CHI 033

EQUITABLE FIRE AND MARINE INSURANCE COMPANY

Date 9-15-77 THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY

Anterson Secretary, Casualty-Property Department

C-5918 Rev. 7-66 VAINTED IN U.S.A. 371

**EXHIBIT G** 

By Lafannam Secretary, Casualty-Property Department

Page: 198 of 268 PageID

Louis

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23



#### UNIVERSAL MANUFACTURING CORPORATION

29-51 EAST SIXTH STREET, PATERSON, NEW JERSEY 07509 . PHONE: (201) 271-3100 . TWX NO. 710 988-5934

September 26, 1974

Page: 199 of 268 PageID

Mr. H.S. Bergen Monsanto Industries 800 N. Linbergh Boulevard St. Louis, Missouri 63116

Dear Mr. Bergen:

Enclosed please find the current Certificate of Insurance indicating coverage from 10/1/74 to 10/1/75.

Sincerely yours,

UNIVERSAL MANUFACTURING CORP.

Jules Schwartz
Eastern Regional Sales Manager

JS/paz

Enclosure

0047244

EXHIBIT H



### UNIVERSAL MANUFACTURING CORPORATION

29-51 EAST SIXTH STREET, PATERSON, NEW JERSEY 07509 . PHONE: (201) 271-3100 . TWX NO. 710 988-5934

September 23, 1976

Mr. R. G. Potter Monsanto Industrial Chemicals Co. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166

Dear Mr. Potter:

Enclosed please find a Certificate of Insurance for the period 10/01/76 to 10/01/77.

Very truly yours,

UNIVERSAL MFG. CORPORATION

Thomas A. Basilo

Controller

TAB/pjh Enc.

0422892

Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

THE TRAVELERS Certificate of Insurance

This is to certify that policies of insurance as described below have been issued to the insured named below and are in force at this time. If such policies are canceled or changed during the periods of coverage as stated herein, in such a manner as to affect this certificate, written notice will be mailed to the party designated below for whom this certificate is issued.

1. Name and address of party t	o whom this certificate is issued	2. Name and address of insured	2. Name and address of insured	
800 N. Lindb St. Louis, M	ustrial Chemicals Co- ergh Boulevard issouri 63166 R. G. Potter	Universal Manufactor of Northwest Inde 6300 Sears Tower Chicago, Illinois	stries, Inc	
	The second section of the section of the second section of the section of the second section of the secti	1.		
<ol><li>Location of operations to wh</li></ol>				
Anywhere in	the U.S.A.			
Coverages For Which Insurance is Afforded	Limits of Linbility	Policy Number	Policy Period **	
Workmen's Compensation and Employers' Liability in the state named in Item 3 hereof	Compensation Statutory			
Bodily Injury Liability —except automobile	\$ (000 each person \$ (000 each occurrence	TRNSL106T220-9-76	10/1/76 to	
\$10,000,000	\$ (000 aggregate† (1Completed Operations mbined (and Products only	1.000277127	10/1/77	
Property Damage Liability Si	ngle (			
cluding Protective	\$ 6000 aggregate			
Bodily Injury Liability —automobile	\$ ,000 each person \$ ,000 each accident \$ ,000 each occurrence			
Property Damage Liability -automobile			Į.	
-automobile	\$ ,000 each accident			
	\$ ,000 each occurrence			
Liability (Bodily Injury and Property Damage)	\$ ,000 each occurrence			
	\$ ,000 aggregate	en Kana		
Catastrophe or Excess	\$ ,000 each occurrence			
Campuophe of Excess	\$ ,000 each aggregate \$ ,000 deductible and			
	, OUU Beductible Boil.			

"Policy is effective and expires at 12:01 A.M., standard time at the address of the named insured as stated herein.

Description of Operations, or Automobiles to which the policy applies:

Includes blanket contractual liability and pollution coverage in case of sudden and accidental spill.

0422893

The insurance afforded is subject to all of the terms of the policy, including endorsements, applicable thereto.

Producer. May Sh. & McLennan, Inc.

Producer. May Sh. & McLennan, Inc.

Office. Chicago

Date 9/17/76

THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INSURANCE COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY

Secretary, Casualty-Property Department

C.5916 Rev. 7-68 Franciscon W.5.2. 471

REVISED

By Arthur Charter OAK FIRE INSURANCE COMPANY

Secretary, Casualty-Property Department REVISED.

Page: 201 of 268 PageID

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### UNIVERSAL MANUFACTURING CORPORATION

29-51 EAST SIXTH STREET, PATERSON, NEW JERSEY 07509 . PHONE: (201) 271-3100 . TWX NO. 710 988-5934

May 31, 1977

Mr. J.A. Alley Monsanto Industrial Chemicals Co. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166

Dear Mr. Alley:

We have your letter of March 24, 1977 with respect to the expiration of our liability coverage on October 1, 1977.

Our insurance company has just informed us that a renewal certificate will be mailed to us by September 1, 1977 and we expect to have it delivered to you no later than September 10th.

Thank you for calling this renewal to our attention.

Very truly yours,

UNIVERSAL MANUFACTURING CORPORATION

Paul H. Einhorn

President

PHE:gk

This is to certify that policies of insurance as described below have been issued to the insured named below and are in force at this time. If such policies are canceled or changed during the periods of coverage as stated herein, in such a manner as to affect this certificate, written notice will be mailed to the party designated below for whom this certificate is issued.

1

1. Name and address of party to whom this certificate is issued

| Monsanto Industrial Chemicals Co. - 800 N. Lindbergh Boulevard St. Louis, Missouri 63166

Attn: Mr. James A. Alley

2. Name and address of insured

Universal Manufacturing Corp. o/o Northwest Industries, Inc. 6300 Sears Tower Chicago, IL 60606

3. Location of operations to which this certificate applies

Limits of Liability	Policy Number	Policy Period*
Compensation Statutory		
t (,000 each person	- 1-x 1= - >	
\$000 (,000 aggregatet hbined (tCompleted Operations and Products only	TRNSL-106T220-9-76	10-1-77 to 10-1-78
mit (,000 each occurrence		
\$ (,000 aggregate		
\$ ,000 each person \$ ,000 each accident \$ ,000 each occurrence		
\$ ,000 each accident \$ ,000 each occurrence	4	
\$ ,000 each occurrence \$ ,000 aggregate		
\$ ,000 each occurrence \$ ,000 each aggregate \$ ,000 deductible amt.		
	Compensation Statutory   ( ,000 each person ,000 each occurrence ,000 aggregated (Completed Operations and Products only ,000 each occurrence ,000 each accident ,000 each accident ,000 each occurrence ,000 each aggregate	Compensation Statutory   (

\*Absence of an entry in these spaces means that insurance is not afforded with respect to the coverages opposite thereto.
\*\*Profice is effective and expires at 12:01 A.M., standard time at the address of the named insured as stated herein.

Description of Operations, or Automobiles to which the policy applies:

Includes blanket contractual liability.

0422881

The insurance afforded is subject to all of the terms of the policy, including endorsemen's, applicable thereto. Producer Marsh & MoLennan, Inc. Office CHI 033

EQUITABLE FIRE AND MARINE INSURANCE COMPANY

Date 9-15-77

THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY

An Procesan Secretary, Casualty-Property Department C-Sedic Rev. 7.66 Florida Or C.S.A. 371

EXHIBIT H

By Lufammann Secretary, Casualty-Property Department

age: 203 of 268 PageID FILED St Louis January

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 204 of 268 PageID

# NURTHWEST INDUSTRIES, INC.

400 West Madison Street, Chicago, Ellinois 60606 Telephone 312 263-4200

January 17, 1972

ATR MAIL

Mr. B. S. Bergen Director-Special E Products Group Monsanto Industrial Chemical Co. Post Office Box 14617 St. Louis, Missouri 63178

Dear Mr. Bergen:

In furtherance of the undertaking between your company and our Universal Manufacturing Corporation, I am enclosing Certificate of Insurance as indicated in Mr. Einhorn's letter of January 7.

If we can be of further assistance, please do not hesitate to ask.

Yours very truly,

Robert B. Smith Insurance Manager

RNS/rl Enclosure

cc: Mr. Paul Einhorn Mr. Clyde Schoenneman

Page: 205 of 268 PageID

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such policies are canceled or	s of insurance as described below have be changed during the periods of coverage will be mailed to the party designated be	as stated becom, in such a man	ner as to affect this certiful
	to whom this certificate is issued	2. Name and address of in	
Barrier Street		Market Land College	
Monsanto Indi Post Office	cial E Products Group ustrial Chemical Co.	Universal Manus c/o Northwest 1 400 West Madiso Chicago, Illino	Industries, Inc on Street
l.	L		
3. Location of operations to wh Anywhere in		orelegio e sosteri i	## +(*x )*: 17
4. Coverages For Which Insurance is Appared	Limits of Limbility	Policy Rumber	1 100 0 100 0
Workmen's Compensation and Employers' Liability in the state named in item 3 hereof	Compensation Statutery	Policy Runter	Policy Period**
Hodily Injury Lisbility	***************************************		14 (01 H) 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
except automobile	\$ ,000 each person T \$ ,000 each occurrence \$ ,000 aggregate( 1Completed Operations)	'KNSL-909307-71	10/1/71 to 10/1/72
cluding Protective	and Froducts only		
Property Damage Liability —except automobile cluding Protective	\$ ,000 each occurrence \$ ,000 aggregate		
	ever in the second second	स्व हराका (४०) । ठालाक	to be a second of the
Hodily Injusy Liability ← automobile	\$ ,000 each person \$ ,000 each accident \$ ,000 each occurrence	\$10,000,000 Combin	ed Single Limi
Property Damage Liability - aniomol-lie	\$ ,000 each secident	,	
	\$ ,000 each occurrence		
Liability (Bodily Injury and Properly Democe)	\$ ,000 each occurrence 8 ,000 agreement		
	\$ ,'000 each occurrence		
Catastrophe or Excess	\$ ,000 each aggregate	0	22919
the right of the party of the second	\$ ,000 deductible and	A TANKS OF THE OR	1
"l'olk y is effective and expires t	naces means that insurance is not afforded at 12:91 A.M., standard time at the addre tomolides to which the policy applies:	se of the named in med as stated !	nerein
Blanket Contr	ractual Liability Cove	rage 1/25/12.	Talked with
Sono del.	for accident	at pollution. Ely	iele endorment
he ly Knice allorded is subject to reluting endorsements, applicable	a all of the terms of the nation.	THE TRAVELE	S INDEMNITY COMPA

EXHIBIT I

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 206 of 268 PageID

# NORTHWEST INDUSTRIES, INC.

400 West Madison Geret, Chicago, Illinois 60606 Tolophone 312 263-4200

September 22, 1972

Mr. H. S. Bergen Monsanto Industries 800 North Linbergh Boulevard 8t. Louis, Missouri 63166

Dear Mr. Bergen:

Enclosed is the Certificate of Insurance which you requested from Universal Manufacturing Corporation earlier this month.

Yours very truly

Robert H. Smith Insurance Manager

RHS: dh

Enclosure

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 207 of 268 PageID #: 1274

### Northwest Industries, inc

6300 Sears Tower Chicogo, Illinois 60606 312/876-7000

September 2, 1977

RE: Certificate of Insurance Universal Manufacturing Corporation

Dear Mr. Alley:

In accordance with your request of Mr. Einhorn of Universal, I am enclosing herewith Travelers Certificate of Insurance evidencing coverage effective October 1, 1977.

Very truly yours,

Robert H. Smith Mgr. Cas./Prop. Ins.

Mr. James A. Alley Monsanto Industrial Chemicals Co. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166

RHS:gaj

Enclosure

cc: Mr. Paul Binhorn Ms. Chestina Hughes

Page: 208 of 268 PageID

1		
Case:	4:23-cv-00204-HEA	LERS #: 1-7 Filed: 02/20/
	Certificate of Insu	#: 1275
such policies are canceled or	es of insurance as described below have been in changed during the periods of coverage as a will be mailed to the party designated below	ssued to the insured named below and are in force at this tin stated herein, in such a manner as to affect this certifica- for whom this certificate is issued.
	to whom this certificate is issued	2. Name and address of insured
r Monsanto In	ndustrial Chemicals Co.	Universal Manufacturing Corp o/o Northwest Industries, Inc.
- 800 N. Line	dbergh Boulevard Missouri 63166	6300 Sears Tower Chicago, IL 60606
Attn: Mr.	James A. Alley	
L	J	
3. Location of operations to w	hich this certificate applies	
4. Coverages For Which Insurance is Afforded Workmen's Compensation and	Limits of Liability Compensation Statutory	Policy Number Policy Period**
Workmen's Compensation and Bmployers' Liability in the state named in Item 3 hereof		
Bodily Injury Liability -except automobile		
except automobile	6 , OOD each person 6 , OOO each occurrence	the Charles and a little of
\$10,00	0 1000 (,000 aggregatet	NSL-106T220-9-76 10-1-77
In cluding Protective C	ombined (and Products only	10-1-78
Property Damage Liability L.	imit (,000 each occurrence	
In cluding Protective	(,000 aggregate	
Bodily Injury Liability —automobile	\$ ,000 each person	
	\$ ,000 each occurrence	
Property Damage Liability —automobile	\$ ,000 each accident	
	\$ ,000 each occurrence	1
Liability (Bodily Injury and Property Damage)	\$ ,000 each occurrence	
Property Damage)	\$ ,000 aggregate	
Catastanta as Pressa	\$ ,000 each occurrence	
Catastrophe or Bucess	\$ ,000 each aggregate \$ ,000 deductible amt.	A 20.9%
*Absence of an entry in these	spaces means that insurance is not afforded we set 12:01 A.M., standard time at the address	ith respect to the coverages opposite thereto, of the named insured as stated herein.
Description of Operations, or /	Automobiles to which the policy applies:	24.5
Includes b	lanket contractual liabi	lity. 0422876
The insurance afforded is subject Producer Marsh & MoLent	et to all of the terms of the policy, including en	dorsomen's, applicable thereto. Office CHI 033 Date 9-15-77
EQUITABLE FIRE AND M.	ARINE INSURANCE COMPANY	THE TRAVELERS INSURANCE COMPANY THE TRAVELERS INDEMNITY COMPANY THE CHARTER OAK FIRE INSURANCE COMPAN
By Andrewson		$\Omega$
Secretary, Casualty-P.		By Lugarmann Secretory, Casualty-Property Departum
C.5018 Rev. 1-68 seintla in u.s.s.	371	1 Serrany, Casualty-Property Departm

**EXHIBIT I** 

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 209 of 268 PageID

### Northwest Industries, Inc. 6300 Sears Tower Chicago, Illinois 60606 312/876-7000

September 12, 1977

RE: Certificate of Insurance Universal Manufacturing Corporation

Dear Mr. Alley:

Enclosed is the above certificate revised in line with our telephone conversation Friday.

We trust this is satisfactory.

Very truly yours,

Robert H. Smith Mgr. Cas./Prop. Ins.

Mr. James A. Alley Monsanto Industrial Chemicals Co. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166

Attn: Ms. Terry Carter

cc: Mr. Paul Einhorn Ms. Chestina Hughes

RHS:gaj

Enclosure

Page: 210 of 268 PageID

		THE TRAVI		277
such policies are canceled or	changed dur	as described below have been ing the periods of coverage as	issued to the insured named below a stated herein, in such a manner	
			for whom this certificate is issued.	Harris Series
1. Name and address of party to whom this certificate is issued			2. Name and address of insure	d
Monsanto Industrial Chemicals Co. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166 Attn: Mr. James A. Alley			Universal Manufa c/o Northwest In 6300 Sears Tower Chicago, Illinoi	dustries, Inc
3. Location of operations to w	hich this certi	ficate applies	1	(e)
25- 2.2010.00.00.00.00.00.00.00		and terms		
4. Coverages Por Which	1		N. P. W. A.	1
Insurance is Afforded Workmen's Compensation and Employers' Liability in the state Damed in Item 3 hereof		mits of Liability tion-Statutory	Policy Number	Policy Period**
Bodily Injury Liability —except automobile		\$000 each person \$000 each occurrence		
In cluding Protective Co.	0,000	(000 aggregate) (1Completed Operations and Products only	RNSL-106T220-9-76	10/1/77 to 10/1/78
Property Damage Liability Si	ngle	( and the day of		
_ In cluding Protective	mit s	( 000 each occurrence ( 000 aggregate		
Bodily Injury Liability — automobile		, 000 each person , 000 each accident		
Property Damage Liability —automobile	\$ <b>*</b>	,000 each occurrence		
91 1	\$	, 000 each occurrence	1-1 12	-
Liability (Bodily Injury and Property Damage)		,000 each occurrence		
		, 000 aggregate		
	\$	, 000 each occurrence	04	22869
Calastrophe or Excess		, 000 each aggregate , 000 deductible amt.		1
"Policy is effective and expires Description of Operations, or A Includes blan	at 12:01 A.M utomobiles to ket con	that insurance is not afforded w l., standard time at the address which the policy applies: tractual liabili	rith respect to the coverages opposite of the named insured as stated here ty and pollution co ll (as per attached	verage
			adorsements, applicable thereto. Office. Chi 033	REVISE
COULTABLE FIRE AND MA	cLennan RINE INSU	RANCE COMPANY	Office Chi 033 THE TRAVELERS INSURAN THE TRAVELERS INDEMN THE CHARTER OAK FIRE	Date 9/15/7 ICE COMPANY ITY COMPANY INSURANCE COMPAN
Secretary, Casualty-Pro	pperty Depart	ment	By futamman	·

**EXHIBIT I** 

1. .s endorsement is issued by that member of The Travelers Insurance Companies which issued the policy of which this endorsement forms a part.

If any additional premium is noted below, this endorsement is issued in consideration thereof. If any return premium is noted below, the receipt thereof is acknowledged upon acceptance of this endorsement.

Effective from OCT 1 1974 at the time of day the policy becomes effective. Amending TJ-SPL-106T222-2-74

Jasued to NORTHWEST INDUSTRIES INC AS DEFINED HEREIN

Date of Issue: 7-2-75 CFH/BK Additional Prentum S

Return Premium \$

(The information provided for above, except the policy number, is required to be stated only when this endorsement is issued for attachment to the policy subsequent to its effective date.)

It is agreed that as of the effective date hereof the policy is amended in the following particulats:

#### EXCLUSION (1) IS AMENDED TO READ:

- (1) TO BODILY INJURY OR PROPERTY DAMAGE ARISING OUT OF ANY EMISSION, DISCHARGE, SEEPAGE, RELEASE OR ESCAPE OF ANY LIQUID, SOLID, GASEOUS OR THERMAL WASTE OR POLLUTANT
  - (I) IF SUCH EMISSION, DISCHARGE, SEEPAGE, RELEASE, OR ESCAPE IS EITHER EXPECTED OR INTENDED FROM THE STANDPOINT OF ANY INSURED OR ANY PERSON OR ORGANIZATION FOR WHOSE ACTS OR OMISSIONS ANY INSURED IS LIABLE, OR
  - (II) RESULTING FROM OR CONTRIBUTED TO BY ANY CONDITION IN VIOLATION OF OR NON-COMPLIANCE WITH ANY GOVERNMENTAL RULE, REGULATION OR LAW APPLICABLE THERETO;
- (2) TO PROPERTY DAMAGE ARISING OUT OF ANY EMISSION, DISCHARGE, SEEPAGE, RELEASE OR ESCAPE OF PETROLEUM OR PETROLEUM DERIVATIVES FROM ANY STORAGE TANK, BARGE OR OTHER VESSEL INTO ANY BODY OF WATER, BUT THIS EXCLUSION (2) DOES NOT APPLY TO PROPERTY DAMAGE RESULTING FROM FIRE OR EXPLOSION ARISING OUT OF ANY EMISSION, DISCHARGE, SEEPAGE, RELEASE OR ESCAPE WHICH NEITHER
  - (I) IS EXPECTED OR INTENDED FROM THE STANDPOINT OF ANY INSURED OR ANY PERSON OR ORGANIZATION FOR WHOSE ACTS OR OMISSIONS ANY INSURED IS LIABLE, NOR
  - (ii) RESULTING FROM OR IS CONTRIBUTED TO BY ANY CONDITION IN VIOLATION OF OR NON-COMPLIANCE WITH ANY GOVERNMENTAL RULE, REGULATION OR LAW APPLICABLE THERETO.

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C. Jordan
G. Swall Calson 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 212 of 268 PageID
C. Paton #: 1279

D. Wood

E. M. Potter-B2NK Redbook Monsanto

BPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO. 600 N. Lindbergh Boulevard 51. Louis. Missouri 63166 Phone: (314) 694-1000

September 1, 1976

Mr. Paul H. Einhorn, President Universal Mfg. Corporation 29-51 East Sixth Street Paterson, N. J. 07509

Dear Mr. Binhorn:

Special Undertaking By Purchasers of Polychlorinated Biphenyls (PCBs)

You will recall that our ability to supply polychlorinated biphenyls to your company and/or subsidiaries under the Special Undertaking was contingent on your having specified product liability insurance coverage.

According to our records, the insurance certificate on file with our Company will expire on October 1, 1976. In order for us to continue shipment of PCB dielectric fluids, it will be necessary for us to receive a renewal certificate prior to the above date.

We would also like to remind you that the insurance we require in support of your Special Undertaking is \$10,000,000 if your annual purchases are 200,000 pounds or over and \$5,000,000 if your annual purchases are under 200,000 pounds. All insurance certificates must also contain the clause, "Includes blanket contractual liability and pollution coverage in case of sudden and accidental spill".

Please send the insurance certificate addressed to my attention.

Very truly yours,

R. G. Potter
Business Director
Functional Products

/dcb

0422894

a unit of Monsanto Company

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 213 of 268 PageID

Langanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO. 800 N. Lindborgh Boulevard 8t. Louis, Missouri 83188 Phone: (314) 894-1000

March 24, 1977

Mr. Paul H. Einhorn, President Universal Manufacturing Corporation 29-51 E. Sixth Street Paterson, N.J. 07509

Dear Mr. Binhorn:

This letter is being sent to you well ahead of the expiration date for the liability coverage which Monsanto requires in order for your company to purchase PCB's. Our records indicate that the insurance certificate on file with Monsanto will expire on October 1, 1977.

As you know, Monsento has announced it will withdraw as a supplier of PCB's by October 31, 1977. In order for us to continue shipment of PCB dielectric fluids up to our phase-out date, it will be necessary for Monsento to receive an Insurance renewal certificate prior to the above date.

In the past we have experienced difficulties with customers and their insurance companies in getting the correct insurance documentation. As the phase-out deadline of October 31st approaches, you as a user of the dielactric fluid probably cannot afford any inordinate delays in obtaining coverage. Therefore, I want to offer the suggestion that you take early action to obtain the appropriate renewal.

Attached is the letter we send to you several weeks before the expiration of your insurance. This letter outlines the requirements as to the amount of coverage and the clause which must be on the certificate.

Your early attention to this matter is appreciated,

Sincerely

J. A. Alley Industry Specialist Dielectrics

tmc cc: Mr. Ed Wickson, P. A.

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0422883

a unit of Montanto Company

Doc. #: 1-7 Case: 4:23-cv-00204-HEA Filed: 02/20/23 Page: 214 of 268 PageID Monsanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO. 800 N. Lindbergh Boyleverd 81. Louis. Missouri 63166 Phone: (314) 694-1000

August 2, 1977

Mr. Paul H. Einhorn, President Universal Manufacturing Company 29-51 East Sixth Street Paterson, New Jersey 07509

Dear Mr. Einhorn:

Re: Special Undertaking by Purchasers of Polychlorinated Biphenyls (PCB's)

You will recall that our ability to supply polychlorinated biphenyls to your company and/or subsidiaries under the Special Undertaking was contingent on your having specified product liability insurance coverage.

According to our records, the insurance certificate on file with our Company will expire on 10/01/77. In order for us to continue shipment of PCB dielectric fluids, it will be necessary for us to receive a renewal certificate prior to the above date.

We would also like to remind you that the insurance we require in support of your Special Undertaking is \$10,000,000 if your annual purchases are 200,000 pounds or over and \$5,000,000 if your annual purchases are under 200,000 pounds. All insurance certificates must also contain the clause, "Includes blanket contractual liability and pollution coverage in case of sudden and accidental spill."

Please send the insurance certificate addressed to my attention.

James A. Alley Industry Specialist Dielectrics

tmc

cc: Mr. N. Ray Clark, Vice President

0422878

e unit of Montanto Company

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

#: 1282

PGB G. R. Graham - New York

September 16, 1970

5/

Mr. Glen Rayno
Electronic Components Division
Universal Manufacturing Corporation
902 Crescent Avenue
Bridgeport, Connecticut 06002

Dear Gleat

It was certainly our pleasure to have you and hike visit with us here in St. Louis last Tuesday and Wednesday. As a follow-up to your request, I have attached several copies of February 9 and 18 letters by D. A. Olson on PCB pollution.

If we can be of further assistance, please feel free to call upon us.

Regards,

J. G. (Jim) Bryant

16

Attach.

EXHIBIT K 0457609

Pronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 216 of 268 PageID

February 25, 1974

Mr. N. R. Clark Universal Manufacturing Company 902 Crescent Avenue Bridgeport, Connecticut 06607

Dear Mr. Clarks

This is to confirm that a meeting will be held in St. Louis for the discussion of the proposed EPA polychlorinated biphenyl effluent standards as published in the Federal Register, December 27, 1973/

The meeting will be held at Monsanto's General Offices site at 800 North Lindbergh Boulevard in the "N" Building, Room 118, on Thursday, February 28, at 9:00 a.m. This meeting will probably require a full day, therefore, travel arrangements should be made accordingly.

Sincerely,

W. B. Papageorge Manager Product Acceptability

WBP/bt

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**EXHIBIT L** 

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itronically Filed - St Louis County - January 19, 2018 - 04:37 PM

Page: 217 of 268 PageID Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1284 Monsanto MONSANTO INDUSTRIAL CHEMICALS CO. 800 N. Lindbergh Boulevard St. Louis, Missouri 63166 Phone: (314) 694-1000 March 7, 1974

Mr. N. R. Clark Universal Manufacturing Co. 902 Crescent Avenue Bridgeport, Connecticut

Dear Mr. Clark:

We thank you for taking the time to attend the PCB Effluent Standards meeting on February 29. We enclose the Minutes of our meeting and hope they accurately reflect the discussions and proposed actions. Should you have any questions regarding the forthcoming EPA Hearing on the Effluent Standards as they affect PCBs please do not hesitate to get in touch with our Mr. W. B. Papageorge. His telephone number is (314) 694-4051.

Very truly yours

C. Paton

Product Manager

Fluids

/pep

cc: W. B. Papageorge bcc: P. G. Benignus
T. L. Gossage
P. L. Slayton
J. G. Bryant

0070441

s unit of Monsento Company

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

Electronically Filed - St Louis County - January 19, 2018 - 04:37 Pt

MINUTES OF MEETING

ON

PROPOSED PCB EFFLUENT STANDARDS

February 28, 1974

Monsanto Company St. Louis, Mo.

007044

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

Chairman: Mr. W. B. Papageorge
Manager, Product Acceptability
Monsanto Industrial Chemicals Co.

#### Objective:

The purpose of the meeting was to share information, experiences and impressions to help each of the participating companies in taking appropriate actions which are mutually supportive and effective in persuading the Administration of EPA to modify the proposed PCB Effluent Standard.

0070445

**EXHIBIT L** 

Rage: 219 of 268 PageID

#### PARTICIPANTS

#### PCB STANDARDS MEETING

#### February 28, 1974

#### CERTIFIED BALLAST MANUFACTURERS

Mr. N. R. Clark

Universal Manufacturing Co.

E.I.A.

Mr. Arnold S. Doty Dr. E. M. Moore Mr. Rudy Carlson P. R. Mallory & Co., Inc. Electrical Utilities Co. Electrical Utilities Co.

#### GENERAL ELECTRIC COMPANY

Mr. James S. Nelson Mr. Stuart Richel Dr. Edward L. Simons

JARD COMPANY, INC.

Mr. Richard Rollins

NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION (NEMA)

Mr. A. M. Salazar

#### WESTINGHOUSE CORPORATION

Mr. H. Sheppard Mr. N. H. Smith

0070446

Rage: 221 of 268 PageID Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1288

#### MONSANTO COMPANY

E. S. Tucker

Market Manager P. G. Benignus

Business Director H. S. Bergen

Utilities and Environmental D. B. Hosmer Protection Director

Senior Science Fellow R. H. Munch

Manager, Product Acceptability W. B. Papageorge

Attorney W. W. Withers

Product Manager C. Paton

W. R. Richard Manager, Research and Development

Research Group Leader

J. R. Savage Manager, Manufacturing

Manager, Toxicology P. L. Wright

0070447

Electronically Filed - St Louis County - January 19, 2018 - 04:37 Pl Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1289 AGENDA

# PCB EFFLUENT STANDARDS MEETING

February 28, 1974

9:00	AM	1. Weld	come - H. S. Bergen
9:10	AM	2. Int	roductory Remarks - W. B. Papageorge
		a.	Brief Review of Proposed Standard
		b.	Critical Action Dates
		c.	Objectives of Meeting
		3. Disc	cussion Topics
9:15	AM	a.	PCB Characteristics - Realistic Definition chemical, physical, biodegradation
9:45	AM	b.	Sampling and Analytical Methodology
10:15	AM	Break	
10:30	AM	c.	Toxicity Acute Chronic
11:30	AM	d.	Bioaccumulation - Biomagnification
12:00	Noon	e.	Dilution - Stream Size
12:30	PM	Lunch	
1:15	PM	r.	Proposed Effluent Standard
2:00	PM	8.	Control at Manufacturing and Use Sites Current losses Background
2:45	PM	Break	
3:00	PM	h.	Economic Considerations
3:30	PM	1.	Action Plans
4:00	PM	Adjourn	

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 223 of 268 PageID

#### MINUTES OF PCB EFFLUENT STANDARDS MEETING

 Mr. Howard S. Bergen, Jr., Director, Specialty Products Business Group of Monsanto Industrial Chemicals Company, welcomed the participants.

#### 2. Introduction - W. B. Papageorge

Mr. Papageorge summarized the timetable past and future on toxic pollutants:

July 6, 1973 - Toxic Pollutants list published

September 7, 1973 - Final toxic pollutants list published including PCBs and 8 other chemical classes (e.g. cyanide, mercury, DDT, cadmium, etc.)

December 27, 1973 - Proposed Effluent Standards published

January 18, 1974 - Filing date for status as participant at proposed EPA Hearing on Standards

January 25, 1974 - (1) Prehearing Conference with EPA

- (11) NEMA, Monsanto, G.E. and Westinghouse recognized as participants.
- (iii) A total of 38 objectors expressed an interest. They represented industry or trade associations with the exception of the Michigan water Research Commission and two powerful environmental groups (Environmental Defense Fund and National Resources Defense Council).
- (iv) Presiding officer made it clear that Hearings will be strictly for cross-examination of participants testimonies in affidavit form only.

0070449

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

March 15, 1974 - Written testimony by 38 objectors to be submitted in affidavit form.

April 8, 1974 - Hearings open for cross-examination and rebuttal evidence. CN-/Cd/Hg - first three. PCBs are 7th (third from last).

Mid-May, 1974 - Hearings completed. (Evenings/weekends may be used.)

June 25, 1974 - Final standards published - effective in one year.

# It should be noted that others who are affected by these standards can still comment by March 25 to:

Dr. C. Hugh Thompson, Chairman-Hazardous and Toxic Substances Regulation Task Force Office of Water Protection Agency, Environmental Protection Agency Washington D. C. 20460

Industry representatives still wishing to comment and who need more background information can contact any of the industry participants (see attached list) or Mr. W. B. Papageorge of Monsanto (314-694-4051).

#### Mr. Richel (G.E.):

- (1) Made a plea for greater industry participation. Comments can still be made up to March 25 with sound excuse for tardiness.
- (11) EPA at January 25 prehearing Conference were reluctant to expose themselves to cross-examination. Dr. Hugh Thompson to be available for cross-examination at Hearings.
- (iii) Many objectors had common interest (e.g. environmentalists). EPA suggested a common counsel for this group.
  - (iv) On each of first 3 pollutants, EPA would offer 2 witnesses.

Mr. Doty (P.R. Mallory) asked about bearing of economic factors on standards.

#### Mr. Richel (G.E.) stated:

- (i) Law is clear-economic factors are not relevant in establishing standards.
- (ii) EPA is somewhat of a split personality on this. The

0070450

**EXHIBIT L** 

Rage: 224 of 268 PageID

Page: 224 of 268 PageID

Page: 224 of 268 PageID

Page: 224 of 268 PageID

Case: 4:23-cv-00204-HEA<sup>3-\*</sup> Doc. #: 1-7 Filed: 02/20/23

Presiding Officer at the Prehearing Conference ruled that economics are relevant. NRDC (National Resources Defense Council) objected and was over-ruled.

(111) Industry can and should therefore introduce relevant economic data. EPA would be wise not to expressly refer to such data in the published standard otherwise NRDC could go to court and EPA over-ruled.

#### Department of Commerce

It was pointed out that Sidney R. Gallier, Deputy Assistant Secretary for Environmental Affairs at the Department of Commerce wrote Monsanto on January 15 asking their views on the proposed effluent standards. Copies of Dr. Gallier's letter and Monsanto's response were circulated at the meeting. Industry should contact the Dept. of Commerce. Their legal counsel (Mr. Morland) has been active on the side of industry in other environmental hearings.

Mr. Salazar (NEMA) pointed out that the PCB Task Force had recommended a standard for PCBs of 0.01 ppb in the main body of water. (EPA was a member of that task force). ANSI C-119 proposes to use this Task Force recommendation and print this as a standard of 0.01 ppb in main body of water.

Mr. Sheppard (Westinghouse) queried if plant effluent standards could be set to meet 0.01 ppb.

Dr. Simons (G.E.) said this implied an acceptance of ANSI C-119 by industry.

There seemed to be some doubt on this.

#### PCB Characteristics

Dr. Tucker (Monsanto) presented hand-outs on:

- (a) Monsanto's proposed definition of PCBs
- (b) Comments on EPA's proposed analytical methodology
- (c) Monsanto's pre-publication paper on biodegradation of PCBs.

#### (a) Definition of PCBs

1-4 chlorobiphenyls do not have long residence time. PCBs up to tetrachlorobiphenyl are not of concern on environmental persistence or biomagnification. Dr. Tucker proposed the following definition:

0070451

**EXHIBIT L** 

egage: 225 of 268 PageID

Page: 225 of 268 PageID

St Louis County

"Polychlorinated biphenyls (PCBs) means materials containing the biphenyl group which is chlorinated and which have been shown to persist and rapidly bioaccumulate in the aquatic environment. These chlorinated biphenyls are identified as those components having gas chromatographic retention times greater than 54, relative to p, p-DDE = 100, under the standard conditions recommended in the EPA PCB test method."

Mr. Sheppard (Westinghouse) said Monsanto's proposed definition was relevant to persistence but was it relevant for standards directed toward toxic materials? Are persistent materials non-toxic?

Mr. Wright (Monsanto) stated the proposed effluent standard had two parts:

- acute limits directed to toxicity of materials and specifically limits PCB concentrations on that basis.
- (11) daily load in effluent based solely on biomagnification (relevant to persistence).

Dr. Simons (G.E.) pointed out that section 307-A of the proposed standard refers to persistence as being a critical factor to be considered.

Dr. Tucker (Monsanto) stated we were badly hurt if all PCBs are regarded as persistent and if biomagnification factors of 200,000 are used. Researchers other than Monsanto have found bacterial degradation of PCBs and that PCBs have been found to undergo metabolism in both aviarian and mammalian animals.

Mr. Nelson (G.E.) asked if proposed PCB definition would exclude Aroclor 1016.

Dr. Tucker (Monsanto) Aroclor 1016 would be excluded for the most part (98.9% is lower than pentachlorobiphenyl). Aroclor 1242 would be excluded to 65% or better. Aroclor 1254 however would not be excluded.

Mr. Papageorge (Monsanto) pointed out that of the factors listed as being critical in determining which pollutants made the EPA list of 9/7/73 only biomagnification appeared relevant to PCBs.

Dr. Simons (G.E.) agreed.

0070452

Case: 4:23-cv-00204-HEA<sup>5</sup> Doc. #: 1-7 Filed: 02/20/23

Mr. Wright (Monsanto) stated that an acute toxicological level is defined in the EPA Basis & Purpose document as ≤ 10 ppm (96 hour LC-50). He also believes that differences in toxicity among PCBs are minor until chlorinated as high as Aroclor 1260.

Mr. Nelson (G.E.) stated that words should be used in a discourse on definition to properly screen us on acute toxicity.

In reference to a comment that Aroclor 1254 would not be excluded by the proposed definition, Dr. Tucker (Monsanto) offered the opinion that transformer fluids were easier to recover than capacitors.

#### (b) Analytical Methodology

Dr. Tucker (Monsanto) stated the EPA's proposed method for PCB analysis was being submitted to ASTM. He thought the method was well written and capable of detection to ppt (parts per trillion) but it was untried and the quantitative accuracy is in question. The method was not submitted for round-robin testing before EPA adopted it. Monsanto has found that by spiking distilled water with 500,000 ppt or 500 ppb of PCBs we get values for PCB that vary by ± 55%. The EPA, however, claims a capability of detecting absolute values at 50 ppt. The EPA method ignores interfering substances.

Mr. Clark (Universal Manufacturing) said that with a proposed upper limit for PCB discharge of 0.0648 lb./day the sensitivity of the analytical method would vary "all over the lot" depending on the size of the water "reservoir" into which the PCBs discharge.

Mr. Sheppard (Westinghouse) commented that if the analytical techniques on determining PCB levels are so difficult, how valid are the determination of toxic values for PCBs.

Mr. Clark (Universal Manufacturing) asked if analytical techniques differentiate between different chlorine levels. Dr. Tucker (Monsanto) said it would depend on the PCB mixture. Arcolor 1242 could probably be identified quantitatively in a mixture with Arcolor 1260 but addition of Arcolor 1254 to the mixture would prevent identification because Arcolor 1254 contains PCB homologs that overlap both Arcolor 1242 and 1260.

Dr. Munch (Monsanto) said that the proposed EPA method does not use high resolution and hence handicaps identification of individual peaks.

Dr. Simons (G.E.) mentioned that after EPA set automotive emission standards (NIOX) the analytical methodology was found faulty and the standards were delayed. In this case, EPA is not setting the effluent standard on analytical methodology but

Pronically Filed - St Louis County - January 19, 2018 - 04:37 PM

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on factors such as toxicity and persistence. The methodology is relevant in enforcement and monitoring. This then leads to the possible argument that the effluent standard is correct and justified on the basis of toxicology et al, but is not enforceable due to lack of an accurate method for absolute value determination of PCB discharge.

Mr. Richel (G.E.) pointed out that EPA won't buy an answer to that argument which seeks to raise the effluent standard to a level that can be accurately measured. Mr. Savage (Monsanto) felt strongly, however, that this dilemma needed to be in the record. Others agreed.

Dr. Tucker (Monsanto) said ASTM would hold a round-robin on the EPA method and that Monsanto would participate. He will send the name of the ASTM contact to the participants so that they can decide if they want to join the round-robin test.

Mr. Sheppard (Westinghouse) said he was not prepared to accept that the proposed EPA method for determining quantities and types of PCB in samples and animals was accurate enough so that toxic limits could be defined on the basis of PCB levels of questionable accuracy.

#### Toxicity

Mr. Hosmer (Monsanto) stated that the original EPA publication on Water Quality Criteria came from a publication by McKee and Wolfe for the State of California. The McKee/Wolfe volume was well done and EPA did not change much of it. There is now a new 2-volume EPA edition extracted from the work of 10 committees of the National Academy of Sciences.

The toxicity of PCBs is related to salmon egg studies and Monsanto doubts the validity of this. Monsanto has made their feelings known to Dr. Thompson of EPA but he thought the criteria were sound. Since then Russell Train has been sued by NRDC and other groups on the grounds that the toxic pollutants list is not long enough and the proposed standards are too lenient.

Mr. Wright (Monsanto) went through the rationale used by EPA in arriving at a PCB discharge maximum of 0.0648 lb./day. He also showed how the standard could be changed and yet be consistent with published data on PCBs. Details follow.

(a) FDA set arbritary proposed tolerances:

5 ppm in fish for human consumption 5 ppm in components for animal feed 0.5 ppm in complete animal feed

0070454

Case: 4:23-cv-00204-HEA<sup>7</sup> Doc. #: 1-7 Filed: 02/20/23

(b) Monsanto would not disagree with these tolerances.

(c) FDA has presented - acute toxicity limits (point sources)
- chronic toxicity limits (daily load)

#### Acute toxicity limits:

96 hour LC-50 studies for PCBs show:

~280 ppb in fresh water (bluegill) ~10 ppb in coastal or seawater (pink shrimp/oysters)

Published data based on materials leaving an outlet and going into a body of water. Acute limits have no direct relation to chronic limits.

#### Chronic toxicity limits:

The EPA equation is:

Chronic limit X water flow rate X safety factor = gm/day discharge

In Marine organisms the chronic limit is set as

$$\frac{0.5 \text{ ppm}}{30.000} = 0.0167 \text{ ppb}$$

In fresh water the chronic limit has been determined by using 0.5 ppm as toxic limit for salmon eggs and a 200,000 biomagnification factor. This gives a chronic limit of

$$\frac{0.5}{200,000} = 0.0025 \text{ ppb}$$

The biomagnification level of 200,000 is based on unpublished data from Stalling & Meyer (Fish Pesticide Lab, U. S. Dept. of Interior, Colombia, Mo.). Dr. Simons gaid that in response to repeated requests by G.E. to the Columbia Lab the only reference they have been given is a Stalling & Neyer paper presented in Carolina in 1971 and which contains no mention of a 200,000 factor. Mr. Wright (Monsanto) stated he has seen only one literature reference to an accumulation factor of ~200,000 and that was in the hepato pancreas of a pink shrimp. If the PCB level was calculated on the basis of the total shrimp then the accumulation factor was only 22,000. Other references give accumulation factors of 1000-75,000 for whole tissues of various fresh water organisms. Accordingly, Mr. Wright proposes that a biomagnification factor of 30,000 and not 200,000 be used. He also proposes that we retain the chronic limit of 0.5 ppm without debating the salmon egg issue.

0070455

EXHIBIT L

Bage: 229 of 268 PageID

Pronically Filed - St Louis County - January 19, 2018 - 04:37 PM

age: 230 of 268 PageID

Fours

This would lead to a discharge level for PCBs:

0.5 x 10,000 x 0.5 x 5.4 = 0.459 lb./day 30,000 (flow rate) (safety factor) (conversion into lb./day)

This compares to the proposed standard of 0.0648 lb./day.

The safety factor comes from the EPA's Basis and Purpose document supporting the proposed effluent standards. It is supposed to take account of non-point sources of PCBs and is the same as 6 of the 9 toxic pollutants proposed for EPA standards. Monsanto's Medical Department feels this safety factor is arbitrary and confers no real toxicological benefit. If deleted, the revised Wright PCB discharge level would be 0.918 lb./day.

One of the most critical parts of the discharge equation is the water flow rate. A significant number of dielectric PCB manufacturers have plants on rivers where the flow rate is under 100 cfs or 1% of the EPA cut-off flow of 10,000 cfs. Several plants discharge into sewage plants which in turn have treated liquid flowing into rivers or streams with very low flow rates. For a river with 100 cfs flow the EPA maximum discharge would drop to 0.000648 lb./day or 0.162 lb. in a 250 work-day year. Even a revised standard of 0.918 lb./day at 10,000 cfs would only be 0.00918 lb./day at 100 cfs or ~2.3 lb. per 250 work-day year. Clearly this is a staggering target to have to meet.

Mr. Doty (Mallory) pointed out that in the present language of the EPA standards municipal sewage systems are not considered point sources.

Mr. Richel (G.E.) was of the opinion that where a plant discharged into a sewage system without treatment and hence into navigable waters the plant could have to comply with effluent standards on toxic pollutants. Mr. Papageorge (Monsanto) felt we should not be complacent and regard discharge to sewage plants being the answer to problems. Mr. Hosmer (Monsanto) stated that 10,000 cfs represents the largest flow the EPA will consider on the grounds that all industry would move to the largest river. The opposite of that argument is that it encourages small plants on every stream in the country.

Mr. Sheppard (Westinghouse) raised the issue of sedimentation. Since it appears that all the experiments to establish toxic values were run without sediment effects being considered, the real-life values were questioned. PCBs attach themselves to sediment. Furthermore the sediment moves down river and so PCB would be dispersed from the point source. It was pointed out by Dr. Richard (Monsanto) that Aroclor 1254 is soluble in water up to 50 ppb and that in time partitioning between sediment and

0070456

Page: 231 of 268 PageID

St Louis

- January

water could take place. Mr. Wright (Monsanto) agreed that the discharge limits were extreme cases in the absence of sediment considerations and this was worth study and incorporation into arguments against the proposed levels.

Dr. Simons (G.E.) queried whether we were correct in concentrating our attacks on the criterion of toxic effects of mammals eating fish and ignoring the possible argument that fish per se must be protected. Mr. Wright (Monsanto) said the proposed standard says both. In salt water, standards are proposed that would protect the species that eat organisms containing PCB. In fresh water, if 0.5 ppm in salmon eggs correlates with <5 ppm in salmon then we are protecting salmon. He also said that the chronic limits and biomagnification limits he was proposing would protect the species themselves. We should, however, beware of arguing for higher levels in fish because we could draw EPA and FDA into conflict. The FDA levels in food, fish etc., are temporary tolerances and any arguments against their validity could lead to a reduction in these tolerances.

Mr. Savage (Monsanto) queried whether raising the level in organisms could cause possible danger to predators.

Dr. Simons (G.E.) quoted from page 39 of the Basis & Purposes document which states that the body burdens of birds and mammals should not increase over present levels. Page 51 of the same document cites a Nat. Acad. Sci. report which gives 2.0 ppm PCB as tolerable level in flesh of whole fish. 2.0 = 0.1 ppm PCB

is given as tolerable level in water divided by a safety factor of 5 to give a maximum PCB concentration in water of 0.002 ppm. Thus EPA accepted 2 ppm PCB level in fish but got to water concentration of 0.002 ppm by using a high level of 200,000 for biomagnification and an arbitrary factor of 5.

If we were to revise the proposed EPA standard by:

- using 2.0 ppm as chronic limit in fresh water species instead of 0.5 ppm;
- (11) substituting 30,000 instead of 200,000 for biomagnification factor;

and

(111) ignoring safety factor of 0.5

then the maximum permissible discharge in 1b. PCB per day would be:

 $\frac{2.0}{30,000}$  x 10,000 x 5.4  $\simeq$  3.6 lb.

0070457

Filed - St Louis County

For the plant situation on a river with a flow of only 100 cfs the discharge would be 0.036 lb/day or 9.0 lb. per 250 work-day year. These levels are still far below the 5 lb./day given in ANSI C-107.

It is therefore apparent that other aspects of PCBs must be highlighted in order to get away from PCB discharge levels as low as even our "revised" proposals.

Aspects to concentrate on are:

(1) Definition of PCBs that excludes biodegradable homologs.

This could exclude 90% or better of Aroclor 1016 and 65% or better of Aroclor 1242. On that basis, discharge levels would be as follows:

2000	Stream	Discharge (lb.PCB equivalent/day)			
PCB Type	Flow (cfs)	EPA	Wright	Simons/Wright	
Any PCB Any PCB	10,000	0.0648	0.918	3.6 0.036	
Aroclor 1016 Aroclor 1016	10,000	0.648	9.18	36.0 0.36	
Aroclor 1242 Aroclor 1242	10,000	0.194	2.75 0.027	10.8	

(2) Try to change stream flows from the present value of the flow rate in cubic feet per second (cfs) expressed as the probable low rate occurring during a 7 consecutive day period once in 10 years at the effluent point.

If the average flow rate over a period of time (to be agreed on) was used, the lowest flow rate in the equation could conceivably be raised by a factor of 10 from 100 to 1000. In the Simons/Wright version for a standard the Arcclor 1016 discharge could be raised to 3.6 lb./day at 1000 cfs flow and Arcclor 1242 to 1.0 lb./day at 1000 cfs flow.

(3) Magnitude of PCB Point-Sources

It is possible that EPA and environmentalists are totally misinformed on the number of plants still using PCBs. In the U.S. today there are:

0070458

Page: 233 of 268 PageID

nically Filed - St Louis County

1 PCB manufacturing plant

~18 capacitor plants using PCB

~27 transformer manufacturing plants using PCB

In the past there were probably 1500-2500\* plants using PCBs. Only 2-3% of these plants continue to use PCB today.

\* (Subject to closer checking if necessary)

In the past  $\sim 97\%$  of plants using PCBs purchased  $\sim 40$  million pounds of PCB per year. Monsanto's PCB sales policy has therefore

- reduced number of using plants to ~2-3% of previous total.
- eliminated ~40M lbs. PCB sales per year.

The EPA standard would limit PCB discharge per plant to 0.0648 lb./day or ~3.2 lb./day across the U.S. (~50 plants). This equates to ~800 pounds in a 250 work-day year. Since fish have survived throughout the 40+ years that PCBs have been produced and widely used, the standard proposed by EPA seems far too drastic.

Turning again to the Simons/Wright proposal we can estimate the effect in terms of annual PCB discharge into water across the U.S. at 1000 cfs:

			US Total per	As Pers	istent F	CBs
Discharge As	Discharge (lb./day)	No. Plants	(pounds)	Discharge (1b./day)	No. Plants	US Total
Any PCB Aroclor 1016 Aroclor 1242 Aroclor 1254	3.6 3.6 1.08 0.36	*1 18 4 23	900 16200 1080 2070	1.2 0.36 0.36 0.36	18 4 23	300 1620 360 2070
			20,250			4350

\* Plant is on river in excess of 10,000 cfs.

Using this technique an argument can be made in favor of the ANSI C-107 proposal of 5.0 lb./day.

0070459

Case: 4:23-cv-00204-HEA<sup>2</sup> Doc. #: 1-7 Filed: 02/20/23

#### Proposed Effluent Standards

Dr. Simons (G.E.) summarized the points he felt had to be dealt with in trying to change the proposed standard:

- Higher persistence of higher PCBs versus alleged lower acute toxicity
- 2. Background levels of PCBs
- 3. Written testimony of participants and correlation

#### Toxicity

EPA Basis & Purpose document (page 50) states that 96 hour LC-50 to fish cannot adequately measure toxicity of PCB. Where is time demarcation between acute and chronic. Chronic effects can be either lethal or non-lethal.

Why are PCBs on the list on toxic grounds?

LD-50 for PCB is such that it is not considered toxic to humans.

For protection of aquatic life the Nat. Aca. Sci. set a 96 hour LC-50 of 10 ppm or less.

In proposing a definition for PCBs, Dr. Simons (Q.E.) felt we

- (a) lack of persistence of homologs below tetrachlorobiphenyl.
- (b) chronic toxicity does not arise for the lower homologs because they are non-persistent.
- (c) ignore acute toxicity no real differences between Aroclor 1016, 1242 and 1254.~

Participants need to consider: Do we have the best definition?

In the tentative EPA analytical method we should take note that in the table on p.3-22, the percentage of PCB was not controlled.

Mr. Carlson (E.U.C.) pointed out that in its present form the standard could saddle present PCB users with all other discontinued uses. Dr. Richard (Monsanto) pointed out that FDA and Boxboard Manufacturer's Association had agreed on a protocol that protected recycle paper users from just such a situation.
Mr. Bergen (Monsanto) asked that copies be circulated to
participants.

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**EXHIBIT L** 

Page: 234 of 268 PageID - January

Case: 4:23-cv-00204-HEA<sup>13-</sup> Doc. #: 1-7 Filed: 02/20/23

We need to word our definitions to exclude residuals. Participants should exchange proposed drafts on wording regarding residuals by March 7.

G. E. stated we should not approach the hearing on the basis that things can't be done. Rather take the proposed standard and point out what it means in real life. In G.E.'s case they use X M lb./year and yet can't lost 0.5 drops per day. Stream flow rates make the matter worse. This is a point on which Dr. Thompson should be cross-examined.

Of the participants present, 5 plants discharge into sewers with outlets into rivers (very small except in 2 cases). Three plants discharge into small rivers.

No one at the meeting could cope with the EPA standard as it is proposed. Only Jard expressed an opinion on what level they could live with. (Jard stated 27 lb. Aroclor 1016 per day. This would be 2.7 lb. PCB by our proposed definition.)

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EXHIBIT L

age: 235 of 268 PageID

Pronically Filed - St Louis County - January 19, 2018 - 04:37 P

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

Participation at EPA Hearing

Definite participation:

Westinghouse

Undecided:

Electrical Utilities

Jard NEMA

No participation:

Electronic Components

Mallory

Objectors of record could adopt non-responding company as witness.

G.E.'s testimony will fall into the following areas:

Explanation of why PCBs are used
Consequences of ban on customers
Inadequacy of EPA/Nat. Acad. Sci. statements

- How standards would apply to G.E.

- Inadequacies of the Standard

definition

methodology

logic behind the standard

#### Other contributory actions:

- Involve Federal Energy Office (e.g. Aeroyox letter on motor-run capacitor contribution to ease energy crisis.)
- Involve F.E.O./other agencies along lines of petrochemical producers' PEG report.
- Power Systems Group of IEEE will circulate a position paper on PCBs (technical aspects) in the dielectric industry to Congress, EPA, FEO and Dept. of Commerce (target date: April).

0070462

**EXHIBIT L** 

Page: 236 of 268 PageID

#### Action Plans

1.	. (W.	В.	Papageorge)	Circulate to participants copies of
				FDA/Boxboard Manufacturers protocol on PCBs in recycle paper.

- 2. (Participants)

  Exchange drafts on testimony regarding PCB residuals/background levels with each other by March 7. (Monsanto contact should be W. B. Papageorge.)
- 3. (Participants) Submit to W. B. Papageorge their thoughts on proposed PCB definition (to exclude 1-4 chlorine homologs).
- 4. (Participants)

  Communicate with each other on how best to handle sedimentation phenomenon (as raised by Mr. Sheppard of Westinghouse).
- (E. S. Tucker) Send out name of ASTM contact for participation in round-robin on proposed EPA analytical method.
- 6. (Participants) Write to Dr. Galler of Commerce Dept. opposing EPA standards.
  (See Galler letter to Monsanto and Monsanto response.)
- 7. (Participants) Those who have not responded to EPA can still write Dr. Thompson by March 25.
- (A. Salazar, NEMA) (a) Get feedback from Sangamo/McGraw Edison on the proposed standards.
  - (b) Determine role NEMA will take on affidavits/testimony at EPA hearing.
- (W. B. Papageorge) Obtain PEG report and send to Mr. Nelson (G.E.).
- 10. (Participants) Involve F.E.O. in EPA Hearing along lines of Aerovox letter to Secretary Simon.

0070463

# INTERNATIONAL DIELECTRICS SYMPOSIUM

X I will attend the Dielectrics Symp	osium on Septemb	er 23.	
I regret I will not be able to atten-			
Please include me among the attend the dinner for Paul Benign	friends and assoc	nates who will	
I will not be able to attend the dia	nner		
I will not be able to attend the towards the gift Enclosed is my cl	heck for \$	(\$4 maximum).	
Enclosed is my check in the amoidinner for persons at \$20		for the gift and	
Please make the following room r West Port Inn.	eservations for me	at the Sheraton	
Number of Rooms	One Person Per Room	Two Persons Per Room	
/ Single Room — 1 Queen bed Double Room — 2 double be	d (\$22/night) eds (\$24/night)	(\$27/night) (\$29/night)	
Confirmation Requested Yes X No	0		
Date arriving SPT 22 6 PM	A Date departs	The second secon	
Name N. RAY CC	ARK O	many (my)	
Address UNIVERSAL MFG (	DRP Tel 33	16-016	
CITY BRIDGEFORT STATE	CONN	zip 06607	10
Reply to: Dr. Cumming Paton Monsanto Company Dept. B2SC 800 N. Lindbergh Blyd.	Additional inform tailed agenda will shortly after receip	be sent to you	0156377
St Louis, Missouri 63166 U.S.A.	1	Monsanto	

**EXHIBIT M** 

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

#: 1306

Electronically Filed - St Louis County - January 19, 2018 - 04:37 PM

# **Transformer and Capacitor Dielectrics Symposium**

A Review and Discussion of Current Factors & Future Trends

September 23, 1974

Sheraton West Port Inn 191 West Port Plaza St. Louis, Missouri U.S.A.

Moderator: Paul G. Benignus

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**EXHIBIT M** 

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1307

Page: 240 of 268 PageID

# TRANSFORMER AND CAPACITOR DIELECTRICS SYMPOSIUM

Monsanto Symposium Breakfast

- Review of environmental issues affecting polychlorinated biphenyl dielectrics usage internationally
- Review of the effects of polychlorinated biphenyls on the environment
- Detection and possible methods for control of polychlorinated biphenyls in industrial effluent streams
- Safe handling of polychlorinated biphenyl fluids and methods for disposal of waste fluids

Monsanto Symposium Luncheon Host Howard S. Bergen, Business Director — Specialty Products Group, Monsanto Company

- An overview of potential new dielectric fluids
- Industry benefits of polychlorinated biphenyl fluids
- Consumer attitudes toward polychlorinated biphenyl fluids

Monsanto Symposium Cocktail Party

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**EXHIBIT M** 

Electronic Components Division

UNIVERSAL MANUFACTURING CORP.



902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

December 17, 1971

Monsanto Company 100 Lafayette Building U - Research St. Louis, Mo.

Attention: Dr. Ralph H. Munch

Dear Ralph:

As a follow-up to our conversation of November 11 in St. Louis, concerning performance of capacitors under highly accelerated life test conditions, we are sending you under separate cover, no charge, samples as follows:

40 pcs. rated 2.0 uf - 580 VAC, identified as UMC 510701. The dielectric paper is 2 x .00066" thick x 1 3/4" wide, 9.0 density between foils, for a total of 1.32 mils. The paper used was Schweitzer Lot #15141.5. Foil was made by Robert Victor Neher, Ltd., and was from Case #22 Release #10, and was .00023" thick x 1 9/16" wide. They were processed through our normal impregnation cycle in Bridgeport.

40 pcs. same as above, except unimpregnated.

These are nominally identical to the capacitors sent to you last July under your purchase order L-59061, but made with different lots of paper and foil.

Best regards,

ELECTRONIC COMPONENTS DIVISION Universal Manufacturing Corp.

N. Ray Clarg, Vice President

NRC/h

EXHIBIT N 0079467

entronically Filed - St Louis County - January 19, 2018 - 0

Page: 242 of 268 PageID Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23

Capacitor Division

SAL MANUFACTURING CORP.

file EPA (30)



902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

August 24, 1976

Mr. David Wood Monsanto 800 N Lindbergh Blvd. St. Louis, Mo. 63155

This is a reminder that in preparation for testimony concerning the EPA proposed PCB effluent standards, I need from you the total pounds of Aroclor 1016 shipped to the various capacitor manufacturers, for comparison with the total pounds in effluent water which Roger Wills will send to me. I believe we agreed that the first six months of this year would be representative, since it included the period when EPA gathered and tested water effluent samples from the various plants. The use of a fairly long period such as six months should minimize the effect of inventory fluctuations, and allow us to assume that your sales figures are substantially equal to the industry usage for the period.

Best regards,

CAPACITOR DIVISION Universal Manufacturing Corp.

Clark, Vice President

NRC/h

**EXHIBIT O** 

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Case: 4:23-cv-00204-HEA

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Doc. #: 1-7

Filed: 02/20/23

Capacitor Division
UNIVERSAL MANUFACTURING CORP.



902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

June 22, 1976

Mr. David Wood Monsanto 800 N. Lindbergh Blvd, St. Louis, Missouri 63155

Dear Dave:

The attached copy of a Connecticut "Act Concerning the Use of PCBs" was signed into law on June 9; I had thought the legislature had adjourned without getting around to passing it, but such was not the case.

The point of concern to Monsanto is, of course, Section 2(a). I talked to a representative of the State Department of Environmental Protection (which drafted the revised version of the bill, which ultimately passed), and pointed out that we purchase the material from you in tank cars at approximately monthly intervals, but cannot normally give you precise delivery requirements as much as 30 days in advance. I am sure the DPE will be reasonable in the matter, and we will of course cooperate with you in complying with whatever requirements they impose.

I don't know who within DEP will be handling the matter, but my contact has been George Trubiano, tel. (203) 566-7166; he is familiar with our operation and can no doubt refer you to the appropriate person.

Best regards,

CAPACITOR DIVISION Universal Manufacturing Corp.

N. Ray Clark, Vice President

NRC/h Enc:

cc: Mike Petrilli, Monsanto EJ Wickson LR Patterson

EXHIBIT O

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English Page 243 of 268 Page ID Page ID Page 243 of 268 Page ID Page 243 of 268 Page ID Page I

Page: 244 of 268 Pagel Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 #: 1311

Capacitor Division

UNIVERSAL MANUFACTURING CORP.



902 CRESCENT AVENUE BRIDGEPORT, CONN. 06607 (203) 336-0161

September 16, 1976

Mr. J. Coleman Weber Manager, Product Acceptability Monsanto Industrial Chemicals Company 800 N. Lindbergh Boulevard St. Louis, Mo. 63166

Dear Cole:

As/a PCB wser who has been among the most critical of the Monsanto posture over the past few months I am delighted to take the opportunity to congratulate Monsanto for the strong stand in connection with the September 13 BUSINESS WEEK article. I applaud Mr. Harbison and Dr. Roush for their September 10 letter to the BUSINESS WEEK Editor-in-Chief. The exceptions they so rightly take to the sloppy and sensational journalism exhibited by the BUSINESS WEEK article are a sufficiently specific and precise rebuttal to give pause to even the most blased reporter.

Best regards,

CAPACITOR DIVISION Universal Manufacturing Corp.

N. Ray Clark, Vice President

NRC/h

X Enzy

DB ishogs EH Harbeson GRound R6 Potter

D wood.

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 245 of 268 PageID

Consanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALE CO. 800 N. Lindbergh Bouleverd St. Louis. Missouri 83186 Phone: (314) 894-1000 October 4, 1976

Mr. Paul H. Einhorn, President Universal Manufacturing Corporation 29-51 East Sixth Street Paterson, N. J. 07509

Dear Sir:

We are writing to advise you that Monsanto will cease manufacture at Sauget, Illinois, of all poly-chlorinated biphenyl (PCBs) products used as dielectrics, effective August 31, 1977. We will cease sales and delivery of these products, effective October 31, 1977.

This decision is consistent with our commitment to exit this business while responsibly taking into account your need to establish replacement products.

Our Marketing Department will be contacting your company shortly to discuss our decision in detail and to answer your questions. We will work with you to accommodate your specific plans and needs within our phase out program.

A unit of Montanto Company

Very truly yours,

R. G. Potter Business Director Functional Products

/deb

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EXHIBIT P

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 246 of 268 PageID

Cancanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO. 800 N. Lindbergh Boulevard St. Louis. Missouri 83188 Phone: (314) 894-1000 October 4, 1976

Mr. N. Ray Clark, V. P. Universal Manufacturing Corporation 902 Crescent Avenue Bridgeport, Conn. 06607

Dear Sir:

We are writing to advise you that Monsanto will cease manufacture at Sauget, Illinois, of all polychlorinated biphenyl (PCBs) products used as dielectrics, effective August 31, 1977. We will cease sales and delivery of these products, effective October 31, 1977.

This decision is consistent with our commitment to exit this business while responsibly taking into account your need to establish replacement products.

Our Marketing Department will be contacting your company shortly to discuss our decision in detail and to answer your questions. We will work with you to accommodate your specific plans and needs within our phase out program.

Very truly yours,

R. G. Potter Business Director Functional Products

/deb

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e unit of Monsanto Company

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 247 of 268 PageID

Lionsanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO. BOO N. Lindburgh Boulevard St. Lovis, Missouri 83168 Phone: 3149 684-1000 October 4, 1976

Mr. Ed Wickson, P. A. Universal Manufacturing Corporation 902 Crescent Avenue Bridgeport, Conn. 06607

Dear Sir:

We are writing to advise you that Monsanto will cease manufacture at Sauget, Illinois, of all polychlorinated biphenyl (PCBs) products used as dielectrics, effective August 31, 1977. We will cease sales and delivery of these products, effective October 31, 1977.

This decision is consistent with our commitment to exit this business while responsibly taking into account your need to establish replacement products.

Our Marketing Department will be contacting your company shortly to discuss our decision in detail and to answer your questions. We will work with you to accommodate your specific plans and needs within our phase out program.

Very truly yours,

R. G. Potter Business Director Functional Products

/deb

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s unit of Montanto Company

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 248 of 268 PageID

Mensanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO. BOO N. Lindburgh Boplevard St. Louis. Missouri 83166 Phone: (314) 694-1000 October 4, 1976

Mr. Armand A. DeMauro, Plt. Mgr. Universal Manufacturing Corporation 11 Jackson Road Totowa, N. J. 07512

Dear Sir:

We are writing to advise you that Monsanto will cease manufacture at Sauget, Illinois, of all poly-chlorinated biphenyl (PCBs) products used as dielectrics, effective August 31, 1977. We will cease sales and delivery of these products, effective October 31, 1977.

This decision is consistent with our commitment to exit this business while responsibly taking into account your need to establish replacement products.

Our Marketing Department will be contacting your company shortly to discuss our decision in detail and to answer your questions. We will work with you to accommodate your specific plans and needs within our phase out program.

Very truly yours,

R. G. Potter Business Director Functional Products

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 249 of 268 PageID

## IN THE CIRCUIT COURT OF ST. LOUIS COUNTY STATE OF MISSOURI

MONSANTO COMPANY, PHARMACIA, LLC, and	)
SOLUTIA, INC.	}
Plaintiffs.	) Cause No. 17SL-CC03368
v.	{
MAGNETEK, INC.	}
Defendant.	)

### Affidavit of Christopher M. Hohn

- I, Christopher M. Hohn, being of sound mind and do hereby declare:
- 1. My name is Christopher M. Hohn. I am a partner at Thompson Coburn LLP ("Thompson Coburn") and counsel for Monsanto Company, Pharmacia LLC f/k/a Monsanto ("Pharmacia"), and Solutia, Inc. (collectively "Monsanto Defendants"). The statements set forth in this declaration are true and correct to the best of my knowledge, information and belief. The statements contained herein are based on my personal knowledge and my review of Thompson Coburn records, except where based upon information provided by other employees of Thompson Coburn, or persons working under their direction and supervision.
- I make this affidavit in support of Plaintiffs' Memorandum in Opposition to Defendant Magnetek, Inc.'s Motion to Dismiss or Stay.
- 3. The Monsanto Defendants recently have been sued in approximately 46 lawsuits ("the PCB lawsuits"). On August 29, 2016, I sent a letter to Mr. Scott S. Cramer, Magnetek, Inc., requesting that Plaintiff Magnetek Inc. ("Magnetek") defend and indemnify Pharmacia in those PCB lawsuits, as required by a Special Undertaking Agreement entered into in 1972 between Magnetek's predecessor, Universal Manufacturing Corporation ("UMC"), and

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 250 of 268 PageID

Pharmacia LLC. Attached hereto as Exhibit Q is a true and correct copy of the August 29, 2016 letter from me to Scott S. Cramer of Magnetek.

- 4. On September 13, 2016, counsel for Magnetek, Mr. Craig A. Leslie, responded to me by sending me a letter in Missouri, rejecting the Monsanto Defendants' tender of the defense and demand for indemnification in the PCB lawsuits. Attached hereto as **Exhibit R** is a true and correct copy of the September 13, 2016 letter that I received from Craig A. Leslie of Phillips Lytle LLP, counsel for Magnetek.
- I responded to Mr, Leslie's September 13, 2016 letter on December 23, 2016.
   Attached hereto as Exhibit S is a true and correct copy of the December 23, 2016 letter from me to Mr. Leslie.
- 6. On April 7, 2017, counsel for the Monsanto Defendants invited Magnetek to attend a meeting on May 16, 2017, at the offices of Thompson Coburn in St. Louis, Missouri, to discuss the parties' positions regarding Magnetek's obligations under the Special Undertaking Agreement. The purpose of the meeting was to provide information to Magnetek and assess whether the parties could structure a dispute resolution process to try to resolve the Monsanto Defendants' claims outside the context of formal litigation. In addition to Magnetek, other companies that had signed Special Undertaking Agreements with Pharmacia (and that also were obligated to defend and indemnify Pharmacia in the PCB lawsuits) were also invited to the meeting. Attached hereto as **Exhibit T** is a true and correct copy of the April 7, 2017 letter from me to Mr. Leslie.
- 7. On May 1, 2017, Mr. Leslie responded that he would attend the meeting, along with two other individuals for Magnetek. Attached hereto as Exhibit U is a true and correct

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 251 of 268 PageID

copy of the May 1, 2017 letter that I received from Craig A. Leslie of Phillips Lytle LLP, counsel for Magnetek.

- 8. The following week, Mr. Leslie responded to me again, confirming that he would attend the meeting. Attached hereto as **Exhibit V** is a true and correct copy of a May 9, 2017 letter that I received from Craig A. Leslie of Phillips Lytle LLP, counsel for Magnetek.
- 9. On Friday May 12, 2017, four days before the parties' scheduled meeting, Magnetek preemptively filed an eight count declaratory judgment lawsuit against Plaintiffs in the Superior Court of Bergen County, New Jersey, without informing Monsanto or its counsel. See Magnetek, Inc. v. Monsanto Co., et al., No. BER-L-3362-17 (N.J. Super. Ct. May 12, 2017) (the "New Jersey Action")
- On May 16, 2017, counsel for Magnetek arrived at Thompson Coburn's offices in St. Louis to attend the scheduled meeting, without informing counsel for the Monsanto Defendants that Magnetek already had filed the New Jersey Action four days earlier. Approximately one hour before the meeting was scheduled to begin, counsel for the Monsanto Defendants learned that Magnetek had filed the New Jersey Action, through a docket alert email. Counsel for the Monsanto Defendants met with Magnetek's counsel, Mr. Joe Schmit, privately before the start of the planned meeting and raised Magnetek's filing of the New Jersey Action. Mr. Schmit confirmed that the lawsuit had been filed, but noted that it had not been served, and stated that the lawsuit was a "placeholder."
- 11. Since Monsanto was preparing to meet with representatives from other companies that had not filed suit, counsel for the Monsanto Defendants excused Magnetek's counsel from the meeting, but requested that Magnetek agree to dismiss the New Jersey Action and enter into a standstill and tolling agreement to permit the parties to continue their negotiation outside the

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 252 of 268 PageID

#: 1319

context of formal litigation. After considering that proposal, Magnetek ultimately declined and served the New Jersey Action on the Monsanto Defendants on June 21, 2017.

On September 1, 2017, the Monsanto Defendants filed the instant suit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2018.

Christopher M. Hohn Thompson Coburn LLP

STATE OF MISSOURI )
SS
CITY OF SAINT LOUIS )

On the 19th day of January, 2018, before me personally appeared Christopher M. Hohn to me known to be the person described in and who executed the foregoing Affidavit and who did state that the averments contained therein are true and correct to the best of his knowledge and that he executed the Affidavit of his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

My term expires: RHONDA EGGEMEYER
Notary Public - Notary Seal
STATE OF MISSOURI

St. Louis City
My Commission Expires: Feb. 1, 2021
Commission # 13547042

Notary Public

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 253 of 268 PageID



Christopher M. Hohn
P 314.552.6159
F 314.552.7000
chohn@thompsoncoburn.com

August 29, 2016

#### VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Scott S. Cramer Magnetek, Inc. N49 W13650 Campbell Dr Menomonee Falls, WI 53051 Scramer@magnetek.com

Re: Tender of Defense & Demand for Indemnification Under Special Undertaking by Purchasers of Polychlorinated Biphyenls contract dated January 7, 1972

Protected Communication: Indemnitee-Indemnitor Privilege; Common Interest Doctrine

Dear Mr. Cramer:

We understand that you are authorized to receive this demand on behalf of Magnetek, Inc. If that understanding is incorrect, please advise immediately and we will redirect this correspondence as necessary.

We write on behalf of our clients Monsanto Company ("New Monsanto"), Pharmacia LLC, f/k/a Monsanto ("Old Monsanto"), and Solutia Inc. (collectively the "Monsanto Defendants"). The Monsanto Defendants have been sued in certain lawsuits by a number of individuals, cities, municipal agencies, and school districts seeking to recover for claimed personal injuries, environmental clean-up and permit costs, property damage, and other damages allegedly caused by exposure to or contamination by Polychlorinated Biphenyls ("PCBs") manufactured and sold by Old Monsanto.

It is the Monsanto Defendants' understanding that Magnetek, Inc. is the successor in interest to Universal Manufacturing Corporation's obligations under the Special Undertaking By Purchasers of Polychlorinated Biphenyls contract Universal Manufacturing Corporation entered into with Old Monsanto on January 7, 1972 (the "Special Undertaking Contract"), a copy of which is enclosed for your reference.

The Special Undertaking Contract states in pertinent part that Magnetek, Inc. will:

defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities,

Thompson Coburn LLP | Attorneys at Law | One US Bank Plaza | St. Louis, Missouri 63101 P 314.552.6000 | F 314.552.7000 | www.thompsoncoburn.com

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 254 of 268 PageID

#: 1321

claims, damages, penalties, actions, suits, losses, costs and expenses (except to the extent arising from failure of PCB to conform to specifications) arising out of or in connection with the receipt, purchase, possession, handling, use, sale, or disposition of such PCB's by, through or under Buyer, whether alone or in combination with other substances, including, without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

Special Undertaking Contract at 1.

By copy of this letter, demand is made for Magnetek, Inc. to defend, indemnify and hold harmless Old Monsanto (and related entities as specified in the Special Undertaking Contract), in connection with all current and future PCB-related litigation wherein Old Monsanto is, or will be, named as a defendant, and for the amount of any resulting judgments (if any) and settlements, to the full extent required by the Special Undertaking Contract. You are hereby formally tendered the defense of the Food Chain Cases, the Water Cases, the School Cases, the Occupational Case, and any other lawsuits on the enclosed list of PCB-related litigation. Copies of the complaints in each case will be provided upon request. Pending the establishment of a reasonable and acceptable arrangement regarding this tender, the cases will continue to be defended and/or settled and Magnetek, Inc. will be held liable for the amount of the resulting settlements or judgments (if any) as well as the incurred costs, expert witness fees, attorney's fees, and all other reasonable expense incurred in defending these actions. You are expressly notified that settlement negotiations relating to certain of the listed cases are currently underway.

The Monsanto Defendants expressly reserve all of their rights of any sort, at law or in equity, including but not limited to those under the Special Undertaking Contract, whether or not identified herein. The Monsanto Defendants also expressly reserve the right to engage in settlement discussions and/or to settle some or all of the above cases, while holding Magnetek, Inc. responsible for those settlements.

The current breakdown of the PCB-related litigation involving the Monsanto Defendants is as follows:

- 53. The Monsanto Defendants are defending a series of personal injury cases in which plaintiffs are contending that they suffer from various types of cancer (primarily non-Hodgkin lymphoma) as a result of their environmental, non-employment exposure to PCBs (the "Food Chain Cases"). The Food Chain Cases currently are pending in state court in Los Angeles County, California and in state and federal courts in St. Louis, Missouri. At present, the Food Chain Cases include approximately 700 plaintiffs. On May 26, 2016, a Judgment was entered against Monsanto in one such case in the total amount of \$46,500,000.00 for alleged personal injuries and punitive damages arising out of the exposure to PCBs in a case captioned *Benito Walker et al.* v. Monsanto Co., et al., Case No. 1122-CC09621-01 (Cir. Court City of St. Louis May 26, 2016).
- 54. The Monsanto Defendants also face a group of lawsuits (currently eight suits have been filed) on the West Coast in which cities and various municipal agencies are

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 255 of 268 PageID

#: 1322

alleging that the Monsanto Defendants should bear some cost of water clean up and wastewater permit costs due to PCB contamination (the "Water Cases").

- 55. The Monsanto Defendants also are defending four cases in which certain school districts allege that they should bear some cost of clean-up and/or rebuilding of schools due to alleged PCB contamination (the "School Cases").
- 56. The Monsanto Defendants also were recently named along with several other defendants in an occupational exposure case filed in state court in Massachusetts (the "Occupational Case").

A current list of all PCB-related litigation wherein the Monsanto Defendants are named as defendants (including court, case caption, and civil docket number) is enclosed. Please note that the next Food Chain Case is currently set for trial on September 12, 2016.

We request acknowledgement that Magnetek, Inc. received this communication and confirmation that Magnetek, Inc. intends to honor its contractual obligations of defense and indemnification under the Special Undertaking Contract within ten (10) days from the date of this communication. We also request that you immediately notify your primary and excess insurer(s) of the demand for defense and indemnity set forth above.

Our Client would welcome the opportunity to discuss the PCB-related litigation referenced above (and on the enclosed list) and the scope of Magnetek, Inc.'s obligations under the Special Undertaking Contract with you. New Monsanto expects to put a process in place for the resolution of this obligation, and those obligations of other similarly situated parties. Please, at your earliest convenience, contact Monsanto's Assistant General Counsel, Litigation, Molly Jones at (314) 694-5425 to discuss this matter.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

Thompson Coburn LLP

By

Christopher M. Hohn

Enclosures

cc: Magnetek, Inc.

c/o CSC-Lawyers Incorporating Service Company

221 Bolivar Street

Jefferson City, MO 65101

(via Federal Express)

Matter Name	Group Reference	Jurisdiction	Court	Docket Number	File Date
Grant Parish School Board v. Monsanto Company (PCB)	PCB - Building	Federal	LA - Western District	1:15-cv-01719-DDD-JDK	5/19/2015
City of Hartford and Hartford Board of Education v. Monsanto (SOI)(PCBO	PCB - Building	Federal	CT- U.S. District	2015-004301	10/23/2015
Town of Princeton, MA v. Monsanto Company (SOI) (PCB)	PCB - Building	Federal	MA - U.S. District	4:15-cv-40096-DJC	7/1/2015
Town of Westport and Westport Community Schools v. Monsanto (SOI) (PCB)	PCB - Building	Federal	MA - U.S. District	1:14-CV-12041-DJC	5/7/2014
Abston, Bertha v. Monsanto Company (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	12SL-CC01495	4/23/2012
Aiken, Ronald v. Monsanto Company (SOI) (PCB Food chain case).	PCB - Food Chain	State	MO - St. Louis City	1422-CC09436	8/15/2014
Ashley, Jerry v. Monsanto (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	12SL-CC01499	4/23/2012 H
Bailey, Roger v. Monsanto Company (PCB Food Chain case)	PCB - Food Chain	State	MO - Eastern District	15SL-CC01768	5/22/2015
Blum, Robert J., Jr. v. Monsanto (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	10SL-CC02866	6/28/2010
Brownlee, Paul v. Monsanto Company (SOI) (PCB Food Chain)	PCB - Food Chain	State	CA - LA County	BC497582	12/14/2012
Brown, Paulette v. Monsanto (SOI) (PCB Food Chain)	PCB - Food Chain	State	MO - St. Louis County	12SL-CC01498	4/23/2012
Burford, Kent N, et al v. Monsanto, et al. (SOI) (PCB Food Chain case)	PCB - Food Chain	State	MO - St. Louis County	16SL-CC00928	3/10/2016#
Burke, Angela v. Monsanto Co. (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis City	1222-CC10374	Fil 132
Carter, Kevin v. Monsanto Company (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	CA - LA County	BC484608	5/11/2012 <del>D</del>
Clair, Sanford v. Monsanto Company (SOI) (PCB)	PCB - Food Chain	State	MO-St. Louis County	095L-CC01964	
Craig, Gary v. Monsanto Company (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	12SL-CC01496	4/23/2012
Dauber, Roslyn v. Monsanto (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	CA - LA County	BC483342	4/23/2012
Dublin, Sydell v. Monsanto (SOI) (PCB Food Chain)	PCB - Food Chain	State	MO - St. Louis County	10SL-CC03822	9/22/2010
Ferrell, Marinda v. Monsanto (SOI) (PCB Food Chain case).	PCB - Food Chain	State	MO - St. Louis City	1322-CC08915	age £102/22/7
Gibson, Dennis L. v. Monsanto Company (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - Eastern District	11SL-CC04951	: 25
Goodman, Betty v. Monsanto (SOI) (PCB Food Chain case)	PCB - Food Chain	State	MO - St. Louis City	1322-CC09213	8/26/2013
Granger, Jacqueline v. Monsanto Co. (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	CA - LA County	BC459770	4/19/2011
Guenther, Valerie Anna v. Monsanto (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	CA - LA County	BC480068	3/5/2012
Hearon, Leslie v. Monsanto (SOI) (PCB Food Chain).	PCB - Food Chain	State	MO - St. Louis County	12S:-CC01497	4/23/2012 <b>6</b>
Kelly, Thomas v. Monsanto Company (SOI) (PCB Food Chain case)	PCB - Food Chain	State	MO - St. Louis County	15SL-CC03845	11/9/2015

LaBarge, Dale L. v. Monsanto (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	12SL-CC01263	4/5/2012
Mosby, Keith v. Monsanto Co. (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	1122-CC02206	
Murphy, Deborah D. v. Monsanto Company (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO- St. Louis City	1222-CL09174	7/6/2012
Naihe, Edward v. Monsanto (SOI) (PCB Food Chain)	PCB - Food Chain	State	MO - St. Louis County	12SL-CC02117	6/5/2012
Nishida Nicolas White, Ruth v. Monsanto and Solutia (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	09SL-CC01964	5/1/2009
Nunn, Mary vs. Monsanto Co. (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis City	1122-CC01207	
Olson Kathleen R. v. Monsanto Company, et al. (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	16SL-CC00919	3/10/2016
Rodriguez, Gullermo v. Monsanto Co. (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO - St. Louis County	10SLCC03408	
Stapleton, Bernadette v. Monsanto (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO-St. Louis City	1122CC09622	9/9/2011
Varela, Jesse v. Monsanto (SOI) (PCB Food Chain)	PCB - Food Chain	State	MO-St. Louis City	BC509170	5/16/2013
Walker, Benito v. Monsanto Company (SOI) (PCB Food Chain Case)	PCB - Food Chain	State	MO-St. Louis City	1122CC09621	
Lamkin, Craig, et ux. v. Monsanto Company, et al. (SOI) (PCB)	PCB - Personal Injury	State	MA - Suffolk County	16-0563	2/19/2016
City of Berkeley v. Monsanto Company (SOI) (PCB)	PCB - Water Contamination	Federal	CA - Northern District	5;16-cv-00071	1/6/2016 #
City of Oakland v. Monsanto Company (SOI)(PCB)	PCB - Water Contamination	Federal	CA - Northern District	4:15-cv-05152	11/10/20 🔂
City of San Jose v. Monsanto Company (SOI) (PCB)	PCB - Water Contamination	Federal	CA - Northern District	5:15-cv-03178-NC	7/10/2015
City of Seattle v. Monsanto, et al. (SOI) (PCB)	PCB - Water Contamination	Federal	WA - Western District	2:16-cv-00107	1/25/2016
City of Spokane v. Monsanto Company (SOI) (PCB)	PCB - Water Contamination	Federal	WA- Eastern District	2:15-cv-00201-SMJ	7/31/2015
Monsanto PCB Water Contamination Litigation (SOI) (PCB)	PCB - Water Contamination	Federal	Judicial Panel /Multidistrict	MDL No. 2697	1/28/2016
San Diego Unified Port and City of San Diego V. Monsanto Co., et al.	PCB – Water Contamination	Federal	CA - Southern District	3:15-cv-00578-WQH-JLB	8/3/15
City of Long Beach v. Monsanto Co., et al.	PCB-Water Contamination	Federal	CA - Central District	2:16-cv-03493-FMO-AS	5/19/16
City of Portland v. Monsanto Co., et al.	PCB – Water Contamination	Federal	OR – Dist. of Oregon, Portland Division	3:16-cv-1418-PK	7/12/16

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 258 of 268 PageID #: 1325

UNIVERBAL MANUFACYURING CORPORATION
2051 DAST SIXTH STREET, PATERSON, NEW JERSEY 07509 • PHONE (201) 271-3100 • TWX NO. 710 988-5934

January 7, 1972

Mr. H.S. Bergen Monsento Company P.O. Box 14817 St. Louis, Missouri 63178

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Doar Mr. Bergen:

Enclosed is the undertaking you requested in connection with our purchase of PCB. As previously discussed, we are executing the undertaking in our own name and are excepting any liability arising from failure of the product to conform to specifications.

Thic undertaking will be covered by a blanket liability policy with the Travelers Insurance Company having limits of 10 million dollars. As of December 31, 1970, Universal's consolidated net worth was 16.8 million and its current ratio was 1.7 to 1.

Very truly yours,

UNIVERSAL MANUFACTURING CORPORATION

Paul H. Einhorn

President

PHE/paz

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Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 259 of 268 PageID

### Special Undertaking by Purchasers of Polychlorinated Biphenyls

Monsanto Company (Monsanto) manufacturers certain polychlorinated biphonyls products (PCB's) which Universal Manufacturing Corporation (Buyer) desires to purchase. While buyer desires to purchase PCB's because of certain desirable flame resistant and insulator properties, Buyer acknowledges that it is aware and has been advised by Monsanto that PCB's zend to persist in the environment; that care is required in the handling, possession, use and disposition; that tolerance limits have been or are being established for PCB's in various food products.

Monsanto has therefore adopted certain restrictive policies with respect to its further production, sale and delivery of PCB's, including the receipt of undertakings from its customers as set forth below, and Buyor is willing to agree to such undertakings with respect to sales and/or delivery of PCB's by Monsanto to Buyer.

Accordingly, Buyer hereby covenants and agrees that, with respect to any and all PCB's sold or delivered by or on behalf of Monsanto to Buyer on or after the date hereof and in consideration of any such sale or delivery, buyer shall defend, indemnify and hold harmless Monsanto, its present, past and future directors, officers, employees and agents, from and against any and all liabilities, claims, damages, penaltics, actions, suits, losses, costs and expenses (Exception the Extentialization failure of PCB to conform with specifications) arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of such PCB's by, through or under Buyer, whether alone or in combination with any other substance including without implied limitation, any contamination of or adverse effect on humans, marine and wildlife, food, animal feed or the environment by reason of such PCB's.

All existing contracts for the sale of PCB's by Monsanto to Buyer are hereby amonded to contain the provision set forth above.

Nothing herein shall create or imply, any duty or obligation of Monsanto to sell or deliver any PCB's to Buyer. No conditions, undertakings or agreements purporting to modify the terms hereof shall be binding unless hereafter made in writing specifically referring to this agreement and signed by the party to be bound and no modification or variance of the above undertaking shall be effective by the acknowledgement or acceptance of any sale document, purchase order, shipping instructions or other forms containing terms or conditions at variance herewith.

OUT ARY	(Suyer)
BY:	- South lead
TITLE:	President
DATE:	January 7, 1972

MONSANTO COMPANY

0167253

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 260 of 268 PageID



# Phillips Lytle LLP

#### VIA E-MAIL & U.S. MAIL

September 13, 2016

Christopher M. Hohn Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101 chohn@thompsoncoburn.com

Re: Monsanto's Purported Tender of Defense & Demand for Indemnification Under Special Undertaking dated January 7, 1972

Dear Mr. Hohn:

Please be advised that our firm has been retained to assist MagneTek in regards to your correspondence dated August 29, 2016, addressed to Mr. Scott S. Cramer, purporting to: (a) tender to MagneTek the defense of Monsanto Company ("New Monsanto"), Pharmacia LLC f/k/a Monsanto ("Old Monsanto"), and Solutia Inc. (collectively, "Monsanto") in the 46 cases identified in the accompanying attachment to your correspondence; and (b) demanding that MagneTek indemnify Monsanto with respect to any damages that might be awarded against Monsanto in those cases, pursuant to the accompanying "Special Undertaking," dated January 7, 1972.

Initially, please note that Mr. Cramer is no longer with MagneTek and that any future correspondence regarding this matter should, therefore, be directed to the undersigned.

Your correspondence is the first notice to MagneTek of the 46 cases identified in the accompanying attachment, in spite of the fact that many of those cases have been pending for years, at least one has already gone to trial and verdict, and another is apparently set for trial this week. Based upon the scant information that Monsanto has provided, MagneTek presently has no reason to believe that it is required to either defend or indemnify Monsanto and, therefore, rejects Monsanto's tender or demand.

ATTORNEYS AT LAW

CRAIG A. LESLIE, PARTNER DIRECT 716 847 7012 CLESLIE@PHILLIPSLYTLE.COM

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 261 of 268 PageID

132 PE

Christopher M. Hohn Page 2 September 13, 2016

MagneTek also reserves all of its rights with respect to Monsanto's tender and demand including, specifically, but without limitation, its right to specify further and additional grounds for rejecting the same as MagneTek's investigation of Monsanto's tender and demand continues.

Very truly yours,

Phillips Lytle LLP

Craig A. Leslie

CALram

By

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 262 of 268 PageID



One US Bank Plaza St. Louis, MO 63101 314 552 6000 main 314 552 7000 fax thompsoncoburn.com

Christopher M. Hohn

314 552 6159 direct chohn@thompsoncoburn.com

December 23, 2016

#### VIA FEDERAL EXPRESS

Scott S. Cramer N49 W13650 Campbell Drive Menomonee Falls, Wisconsin 53051

Scramer@magnetek.com

Protected Communication: Indemnitee-Indemnitor Privilege; Common Interest Doctrine

Re: Magnetek, Inc.'s obligations under Special Undertaking Agreement

Dear Mr. Cramer:

This letter is a follow-up to my August 29, 2016 correspondence to you regarding Magnetek, Inc.'s ("Magnetek") contractual obligation to defend and indemnify Monsanto in the pending PCB lawsuits referenced in my letter. Specifically, I write to suggest that we schedule a meeting to discuss our clients' respective positions regarding those obligations.

The information Monsanto previously provided demonstrates Magnetek's duty to defend Monsanto in the pending PCB litigation. The duty to defend is determined by comparing the allegations of the complaints to the language of the parties' agreement. Where the allegations give rise to a claim potentially within the scope of the agreement, the duty to defend arises. Monsanto has provided Magnetek with a copy of the Special Undertaking Agreement its predecessor in interest, Universal Manufacturing Corporation ("Universal"), entered into with Monsanto, and docket information to facilitate Magnetek's review of each individual complaint. These materials are sufficient to demonstrate Magnetek's obligation to defend Monsanto in the pending litigation.

Magnetek has a duty to defend Monsanto in the pending litigation because the plaintiffs' allegations fall squarely within the scope of the Special Undertaking Agreement. Magnetek through its predecessor in interest, Universal, agreed to defend and indemnify Monsanto against

.

As a courtesy, copies of the complaints are available for your review at the following link: <a href="https://thompsoncoburn.box.com/s/j00ik2j3ofpvm69xojoa3im88ic8afa1">https://thompsoncoburn.box.com/s/j00ik2j3ofpvm69xojoa3im88ic8afa1</a>. We will provide the password needed to access these documents via separate correspondence.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 263 of 268 PageID

#: 1330

any and all liabilities, claims, and actions arising out of or in connection with Universal's "receipt, purchase, possession, handling, use, sale or disposition" of PCBs after January 7, 1972. The pending claims and actions fall within the scope of the agreement for several reasons. For example:

- The claims and actions "aris[e] out of or in connection with" Universal's post-January 1972. PCB purchases, because the plaintiffs seek to impose liability on Monsanto for its manufacture and sale of all PCBs, including those purchased by Universal after January 7, 1972.
- The claims and actions also arise out of or in connection with Universal's possession, handling, use, sale, and/or disposition of PCBs purchased after January 7, 1972, because plaintiffs assert injuries allegedly caused by general environmental and food chain exposure to PCBs, and Universal's possession, handling, use, sale and disposition of PCBs purchased after January 7, 1972 contributed to the amount of PCBs in the environment and food chain.
- Magnetek cannot credibly deny that Universal's possession, handling, use, sale and/or disposition of PCBs purchased after January 7, 1972 contributed to the amount of PCBs in the environment and food chain. Universal purchased almost 12 million pounds of PCBs after January 7, 1972, which led to the presence of PCBs in various locations across the country including the areas in and around Bridgeport, Connecticut and Totowa, New Jersey. In addition, in 1981, an EPA inspection report cited Universal for several violations including improper disposal and storage of PCBs.
- The claims and actions also arise out of or in connection with Universal's possession, handling, use, sale, and/or disposition of PCBs purchased after January 7, 1972, because the plaintiffs specifically allege that their injuries were caused by the improper dumping of PCBs into the environment by Monsanto's customers, which include Universal.<sup>2</sup>

Furthermore, Monsanto was recently served with a new Water Case: State of Washington v. Monsanto Company et al., Superior Court of King County, Washington. A copy of the complaint filed in this case is included in the link referenced in Footnote 1 above. In this action, the State of Washington asserts claims for public nuisance, product liability, negligence, equitable indemnity, and statutory trespass, seeking to recover for alleged injury to state natural

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<sup>&</sup>lt;sup>2</sup> These descriptions are only examples of the manner in which the allegations and claims made in the PCB litigation fall within the scope of the Special Undertaking Agreement; they should not be construed as an exhaustive list of the grounds on which Monsanto may seek defense costs and indemnity from Magnetek.

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 264 of 268 PageID

#: 1331

resources, including waterways, clean-up costs, and other alleged damages. Magnetek has a duty to defend Monsanto in this case, as it does in the other Water Cases.

The claims asserted in the pending litigation arise out of or in connection with the PCBs Universal purchased after January 7, 1972 that have been released into the environment (whether by Universal or those to whom Universal sold them) in combination with all other PCBs in the environment. The Special Undertaking Agreement, by its express terms, includes liabilities arising out of "or in connection with" PCBs purchased after January 7, 1972 "alone or in combination with other substances." Thus, Magnetek has a duty to defend Monsanto in the litigation.

Since putting Magnetek on notice, Monsanto has incurred approximately \$4.2 million in attorneys' fees defending the PCB litigation, and those fees continue to accrue. Monsanto also recently agreed to pay up to \$280 million dollars to settle all of the pending PCB Food Chain Cases. Under the terms of the Special Undertaking Agreement and the governing law, each indemnitor, including Magnetek, is jointly and severally liable to Monsanto for its cost of defending the PCB litigation, as well as amounts paid to resolve the Food Chain Cases. Prejudgment interest is currently accruing on amounts Magnetek owes to Monsanto.

According to our sales records, Magnetek's predecessor in interest, Universal, purchased at least 11,918,600 pounds of PCBs from Monsanto after signing the Special Undertaking Agreement. That represents 8.34% of all PCBs purchased after January 1972 by domestic indemnitors who remain viable companies.

Monsanto would prefer to resolve the parties' disagreement over the scope of Magnetek's obligations under the Special Undertaking Agreement without resorting to formal litigation. Informal resolution of the dispute will be more cost-effective for both sides, and allow greater flexibility in crafting a solution. Please let us know by January 20, 2017, if we can schedule a meeting to discuss our respective clients' positions in the near term.

Please note that Monsanto expressly reserves all of its rights of any sort, at law or in equity, including but not limited to common law contribution and indemnity, in addition to those under the Special Undertaking Agreement, whether or not identified herein.

We would appreciate your prompt attention to this matter, and look forward to hearing from you.

Sincerely,

Thompson Coburn LLP

Christopher M. Hohn

Partner

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 265 of 268 PageID



One US Bank Plaza St. Louis, MO 63101 314 552 6000 main 314 552 7000 fax thompsoncoburn.com

Christopher M. Hohn 314 552 6159 direct chohn@thompsoncoburn.com

April 7, 2017

VIA ELECTRONIC & FIRST CLASS MAIL

Mr. Craig A. Leslie Phillips Lytle LLP One Canalside 125 Main Street Buffalo, NY 14203-2887 CLeslie@phillipslytle.com

Re: Informational Meeting to Discuss PCB Liabilities for Companies that Signed a

Special Undertaking Agreement with Monsanto

Dear Mr. Leslie:

A number of companies signed a Special Undertaking Agreement with Monsanto in the early 1970s relating to their purchase of PCBs. Pursuant to those agreements, Monsanto has tendered the defense of certain PCB litigation to 26 companies, including Magnetek, Inc., and demanded indemnification from them for amounts paid by Monsanto in connection with such litigation.

Monsanto's discussions with those 26 companies are at various stages, but several companies have requested additional information regarding the litigation and their potential liability for defense costs and indemnification. For that reason, Monsanto will hold an informational meeting for all companies who wish to attend on May 16, 2017 at 10 a.m. The meeting will take place in St. Louis, Missouri at the offices of Thompson Coburn LLP. Additional details will be provided for those who plan to attend.

At the meeting, we will provide information regarding the indemnitors' shares of post-January 1972 PCB sales, the status of Monsanto's settlement of the Food Chain Cases, past and ongoing defense costs incurred in the PCB litigation, and options for resolving each company's liabilities outside the context of formal litigation. We also will allow time for a question and answer session. Please let us know by May 2, 2017 if you would like to attend the meeting, and who would be present at the meeting on behalf of Magnetek. If you have specific questions that you would like addressed at the meeting, please submit those questions in writing at least one week in advance of the meeting. Also, prior to attending the meeting, we will send you a Confidentiality Agreement for your review and execution.

According to our current assessment of Monsanto's sales records, Magnetek, Inc. and/or its predecessors purchased 11,918,600 pounds of PCBs from Monsanto after signing the Special Undertaking Agreement. That represents 8.16% of all PCBs purchased after January 1972 by

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 266 of 268 PageID

April 7, 2017 Page 2

domestic indemnitors who remain viable companies. While Magnetek is jointly and severally liable for the full amount of the \$280 million Food Chain Cases settlement, a 8.16% share of that amount would equal \$22,848,000. Prejudgment interest is currently accruing on amounts Magnetek owes to Monsanto.

We hope you are able to attend the informational meeting next month, and that we can begin working toward an agreement regarding the amount Magnetek owes to Monsanto under the Special Undertaking Agreement. We look forward to hearing from you.

pher Hohn

Sincerely,

Thompson Coburn LLP

By

Christopher M. Hohn

Partner

CMH/rds



# Phillips Lytle LLP

### VIA EMAIL & U.S. MAIL

May 1, 2017

Christopher M. Hohn, Esq. Thompson Coburn LLP One US Bank Plaza St. Louis, MD 63101 (chohn@thompsoncoburn.com)

Re: Monsanto v. Magnetek Inc., et al.

Dear Mr. Hohn:

As you know, our firm represents Magnetek Inc. ("Magnetek") in connection with Monsanto's demand for indemnification relative to PCB liabilities. Please be advised that Magnetek plans to attend the May 16, 2017 informational meeting. Magnetek's attendees will include Alan Korman, myself and my partner Joseph Schmit.

Very truly yours,

Phillips Lytle LLP

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Craig A. Leslie

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ATTORNEYS AT LAW

CRAIG A. LESLIE, PARTNER DIRECT 716 847 7012 CLESLIE@PHILLIPSLYTLE.COM

**EXHIBIT U** 

Case: 4:23-cv-00204-HEA Doc. #: 1-7 Filed: 02/20/23 Page: 268 of 268 PageID



# Phillips Lytle LLP

### VIA EMAIL & U.S. MAIL

May 9, 2017

Christopher M. Hohn, Esq. Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101 (chohn@thompsoncoburn.com)

Re: Monsanto v. Magnetek Inc., et al.

Dear Mr. Hohn:

As indicated in my letter of May 1, 2017, Magnetek plans to attend the May 16, 2017 informational meeting. Your previous correspondence indicated that additional details would be provided for those who plan to attend. Please advise of those details.

Very truly yours,

Phillips Lytle LLP

Craig A. Leslie

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Doc #01-3038666.1

ATTORNEYS AT LAW

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**EXHIBIT V**